# THE TRIALS OF PHILLIS AND HER CHILDREN: THE FIRST FUGITIVE SLAVE CASE IN INDIANA TERRITORY 1804-1808

Gwendolyn J. Crenshaw

Submitted to the faculty of the Graduate School
in partial fulfillment of the requirements
of the degree
Master of Arts
in the Department of History
Indiana University

September 1987

Accepted by the Graduate Faculty, Indiana University, in partial fulfillment of the requirements of the degree of Master of Arts.

Miriam Z. Langsam

Miriam Z. Langsam, Ph.D.,
Chairperson

Master
Committee

Monroe H. Little, Ph.D.

B. Riesterer

Berthold Riesterer, Ph.D.

Date of
Oral examination

September 18, 1987

To my mother and to my father
the keepers of my goal posts.

Acknowledgements

There are many people who have generously contributed their time and energy to the completion of this thesis. First and foremost, I wish to thank Dr. Miriam Z. Langsam, the chairperson of my committee, for her guidance, insight and technical assistance. I am also grateful to the other members of my committee, Drs. Monroe H. Little and Berthold Riesterer for their very helpful criticisms and insightful suggestions.

I also wish to thank those people who generously shared source material and documents: Carolyn Autry, Richard Day, Martha Clevenger, Harold Forbes, Tom Kasean, Robert Stevens, and Jonathan Walters. In addition, I would like to express my appreciation for the contributions of Mary Gelzliechter, Dr. Ralph Gray, Joyce Hendrixson, Karl Illg, Ann Mooney, Dr. Scott Seregny, my friend and mentor Dr. Stanley Warren, Frances Wooden, and the staff at the Indiana Historical Society, the Indiana State Library, the Byron Lewis Library, the Missouri Historical Society, the University of Chicago Library, and the West Virginia University Library.

In closing, I would like to show my appreciation to my family for helping me through this experience.

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## Introduction

### Contradictions and Paradoxes in the Old Northwest

Beginning in 1804, the case of Phillis and her children, in its various aspects, spanned over four years. The focus of the case shifted during its convoluted history from the issue of fugitives from slavery to, in 1808, the right and validity of indenture. On trial were Phillis, and her children Peggy and George and later, Hannah. This case is important because it is the first of its kind in Indiana Territory.

It is also important because no historian has examined a fugitive slave case during the Federalist Era in any detail. They have focused most on what precipitated cases and their outcomes. Jacob Dunn, Indiana a Redemption From Slavery, and Indiana and Indianans; Francis S. Philbrick, The Laws of Indiana Territory 1801-1809; Leander Monks, Courts and Lawyers of Indiana; John B. Dillon, A History of Indiana; Homer J. Webster, William Henry Harrison's Administration of Indiana Territory; Col[onel] William M. Cockrum, Pioneer History of Indiana; and Daniel Waite Howe, The Laws and Courts of the Northwest and Indiana Territories, mention the case of Phillis and her children. Some of the authors

offer explanations for the case, but none examine it fully. Those who mention Hannah, have neither connected her case with Phillis' nor realized that she was another child of Phillis'.

Marion Gleason McDougall, Fugitives Slaves 1619-1865, and Paul Finkelman, An Imperfect Union Slavery, Federalism, and Comity are examples of works that cover fugitive slaves from a national perspective. Both discuss the Fugitive Slave Law of 1793. McDougall concentrates mainly on the implementation of the law whereas Finkelman examines the legal status of slaves in free states. Although Finkelman gives numerous examples of the operation of the fugitive slave law in Northern states, neither he nor McDougall discuss any of the cases at length.[1]

This is the first time that a fugitive slave case of the early period has been studied in detail. Equally important is the fact that the case of Phillis and her children, because of its lengthy history, reflects the perceptions of the time, the practice of the Governor and the Courts in law cases involving the issue of slavery, and, finally, the influence and ultimate triumph of customs over laws. Moreover, the cases of Phillis and her children occured at a time when the Executive of the

[1] This is not meant to imply that these works have no merit. All of them, especially Finkelman's, make important contributions to the field.

Territory, the Judges of the General Court, and, subsequently, the General Assembly of the Territory, strove most vigorously to insure and to establish a slavocracy in Indiana Territory.

Even more importantly, the issue in Phillis' cases was not exclusively on fugitives slaves per se, but about the "people's" rights to own private property, to maintain the status quo, to exercise their sovereignty as citizens under the Constitution and to define the position of blacks--both free and slave--in the Indiana Territory. In these aspects, the cases of Phillis and her children were a rehearsal for the Dred Scott decision which the Supreme Court of the United States decided over fifty years later. Clearly, both cases dealt with the status of free and enslaved blacks in the United States. These are the issues that this paper will address.

There were actually four different trials, two involving Phillis, Peggy and George, one involving Peggy, and one involving Hannah. The first began on August 27, 1804, when Simon Vanorsdel, a man who claimed to be acting as an agent for the heirs of the owners of Phillis and her children, answered writ of habeas corpus. This writ demanded that Vanorsdel produce Phillis, and two of her children, Peggy and George, before the General Court.

Vanorsdel alleged that they were fugitives from slavery --the slaves of John Kuykendall, Jr. and

Elizabeth his wife of Hampshire County, Virginia.[2] On the surface the case seemed simple--slavery or freedom. "The negroes were free," Isaac Darnielle, a General Court lawyer not involved in the case, who opposed the territorial administration, declared, "or they were the slaves of heirs of John and Elizabeth Kuykendall... ."[3] This contemporary stated the logical and legal position but traditon--the status quo--regarding blacks would muddy the waters and drag out over four years. Hence, it was not simply, 'either they were slaves...or they were free.'

The cases of Phillis and her children and that of Dred Scott were attempts to settle constitutional and political issues--specifically, to define the constitutional and political status of free and enslaved blacks, first in the Old Northwest and later, in the Union. Just as significant, is that these cases mirrored judicial arrogance displayed by representatives of "the people" in settling the question of whether Congress or the people could or should regulate slavery in the

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[2] Simon Vanorsdel spelled his name this way. Other spellings of the name include: Vanarsdel, Vanorsdal, Vanorsdall, Vannorsdall. When references are made to him in this paper, his name will be spelled as he spelled it. Otherwise it will be spelled according to the document quoted.

[3] Isaac Darnielle, The Letters of Decius (Louisville, 1805),in "The Letters of Decius," ed., John D. Barnhart, Indiana Magazine of History 43 (September, 1947), 263-284.

Territories. More specifically, the Territorial administration in the Indiana Territory used the cases of Phillis and her children to decide whether Congress or the citizens of the Territory should regulate slavery in the Indiana Territory as the Supreme Court used the Dred Scott case to define the status of blacks and settle the question relative to the Missouri Compromise.

In both cases, black people were moved from a state to a territory. Phillis and her children were from Hampshire County, Virginia and were brought to and remained in the Northwest Territory by someone other than their alleged owners. Scott was originally taken from Southampton County, Virginia via Alabama to St. Louis, Missouri, to Illinois and the Minnesota Territory, and then back to St. Louis.

The sixth article of the Ordinance of 1787 permitted no slavery in the Territory which is now the states of Indiana, Illinois, Michigan, Wisconsin, and Minnesota, west of the Mississippi River. In both Phillis' and Scott's cases, different laws applied in the territories than in the states. The Missouri Compromise of 1820 forbade slavery north of the thirty-six degree thirty minutes latitude of the Louisiana Purchase which included Minnesota, east of the Mississippi River. Scott, therefore, claimed he was free because he had lived for more than two years in Illinois and subsequently lived

in the Minnesota Territory, east of the Mississippi where no slavery was permitted. In Phillis' case, as will be developed in later chapters, the movement to the Indiana Territory, covered by the Odinance, should have also led to freedom.

While the issue of Phillis' and Scott's cases is of concern, because of the legal problems, their cases took on greater significance than the freedom of these individuals--problems created by the Ordinance and the Constitution.[4] The Ordinance and the Constitution, both passed in 1787, complimented, yet contradicted each other. Many of the most brilliant men in American history understood that the Northwest Ordinance excluded slavery from the Northwest Territory. For example, Abraham Lincoln, who was certainly no abolitionist, explained to an audience in the state of Indiana in 1859:

> The ordinance of 1787 was passed simultaneously with the making of the Constitution of the United States. It prohibited the taking of slavery into the North-western Territory. ...There is nothing said in the Constitution relative to the spread of slavery in the Territories, but the same generation of men said something about this ordinance of '87... .

[4] The issues decided in the Scott decision were on a plea in abatement, Negro citizenship, the Territorial question and the comity question in Illinois. See Don E. Fehrenbacher, The Dred Scott Case (New York, 1978), 337. The issues of citizenship, and comity and the Territorial question apply in Phillis' case.

> Our fathers who made the goverment made the ordinance of 1787.[5]

What Lincoln neglected to mention was that though it was the same generation of men who passed the Ordinance and adopted the Constitution, it was the Continental Congress that passed the Ordinance in New York on July 13, 1787, and another group of men, at the Constitutional Convention, who adopted the Constitution in Philadelphia two months later on September 17, 1787. Both documents complimented each other in that one gave the settlers of the Northwest Territory and the other gave the people of the Union the rights to their property. However, the Ordinance asserted the power of Congress to regulate governmental matters in the territories and the Constitution empowered the people with sovereign rights. Thus, within two months after the passage of the Ordinance, the debate began over whether Congress could or should regulate government in the Territories or the people.

In 1857, while reading the Dred Scott decision, Chief Justice of the United States Supreme Court, Roger B. Taney, declared that the Constitution superceded and annuled the Northwest Ordinance and he acknowledged the eminence of the people--the citizens--in matters of

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[5] Abraham Lincoln quoted in The Northwest Ordinance 1787 A Bicentennial Handbook, ed. Robert M. Taylor, Jr. (Indianapolis, 1987), x.

government. He announced that the framers of the Constitution "had a right to establish any form of government they pleased, by compact or treaty among themselves and to regulate rights of persons and rights of property in the territory as they might deem proper."[6] Of the Continental Congress, Taney proclaimed, "It was by a Congress representing the authority of the several and separate sovereignties and acting under their authority and command, (but not from any authority derived from the Articles of Confederation,) that the instrument usually called the ordinance of 1787 was adopted." As the Chief Justice continued to explain, after the Constitution was adopted, a new nation and a new form of government "came into existence [and] took nothing by succession."[7]

The historian Benjamin Ringer argued that the Constituional Convention "sanctified not one but two models of society. On the 'visible' level of the Constitution is a society built on the concept of the sovereignty of the people and on the rights of the governed. And on the invisible level of the Constitution

[6] Taney quoted in Benjamin B. Ringer, 'We the People' and Others Duality and America's Treatment of Racial Minorities (New York, 1983), 1111. Many historians have pointed out that Taney, who was from Maryland, was a Southerner. He had owned slaves, however, he manumitted them many years before the Scott decision. He has been described as no enthusiastic supporter of slavery, but no friend to the anti-slavery movement. See Vincent C. Hopkins, S. J., Dred Scott's Case (New York, 1971), 61.

[7] Ibid.

is the society built on 'unequal rights' and the enslavement of subjugated "other persons."[8]

Three provisions of the Constitution created and addressed this duality of freedom and slavery in the new nation. The first provision dealt with the apportionment of representatives according to population numbers counting black slaves as three-fifths of a person. The second provision granted slave states the right to import slaves for a twenty year period--until 1808. The third dealt with fugitive slaves and was a repetition of the second part of the sixth article of the Northwest Ordinance:

> No person held to service or labor in one State, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.[9]

Hence, by adopting the three provisions, as Ringer noted, the Convention made the federal government a party to the perpetuation of the slave system, protected the rights of the slave owner, and legitimized the slave system.[10]

As Taney pronounced in the Dred Scott decision, the perpetuation of the slave system was justifiable, proper

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[8] Ibid.

[9] Ibid.

[10] Ibid.

and no mistake. "The inferior condition of the Negro," Taney orated, "for at least a century before 1787, as demonstrated in English and American law and practice, indicated that this class of people was not to be embraced by the general clauses of the declaration of Independence or the Constitution."[11] Therefore, the Convention, in enacting the three provisions which dehumanized and excluded blacks, maintained a tradition--the status quo--created long before the Constitution. This tradition was to plague the politics of the Northwest and the nation until the Civil War resolved the specific issue of fugitive slaves and the fourteenth amendment made blacks citizens of the United States. This tradition--the status quo--was even more powerful than law.

It was the Illinois Senator, Stephen Douglas, who, the year after the Dred Scott decision, astutely and precisely described the power of the status quo. "It matters not," Douglas, in a debate with Abraham Lincoln on August 27, 1858, declared, "what way the Supreme Court may...decide as to the abstract question of whether slavery may or may not go into a Territory under the constitution... ." Indeed, Douglas went on, "the people have the lawful means to introduce [slavery] or exclude it as they please... ." Moreover, as he observed, "For

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[11] Ibid.

the reason that slavery cannot exist a day or an hour anywhere unless it is supported by police regulation."[12]

While it was the popular Douglas who received the most publicity for articulating the paradox of custom over law, the phenomenon was not new and others had expressed and addressed it before. Certainly this phenomenon existed in the Northwest and the Indiana Territories. During territorial times, those in power and many of the people held slaves in the Territory and their practice was supported by police regulation. Not only had many early English and American settlers accepted and participated in the custom of slavery in the original states, they brought it with them to the Northwest Territory. One early settler noted, "they have all brought from the Souther[n] States their prejudices & fondness for that nefarious system."[13] Slavery in the Northwest was not new, however. When the English-Americans came to the Territory, the French and the Spanish living there held slaves.[14]

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[12] Stephen Douglas, " Second Joint Debate Freeport, Illinois, August 27, 1858," ed., Robert W. Johannsen, The Lincoln Douglas Debates of 1858, (New York, 1965), 88-89.

[13] John Badollet to Albert Gallatin, Vincennes, January 1, 1806, in Gayle Thornbrough, ed., The Correspondence of John Badollet and Albert Gallatin, 1804-1836 (Indianapolis, 1963), 64.

[14] Charles Kettleborough, Constitution Making in Indiana 1780-1850, (3 vols. c. 1916 reprint Indianapolis, 1971), I, 27.

Consequently, as one historian pointed out, "The most deeply and continuously dividing issue in the Northwest, as in the nation at large, was negro slavery." He continued:

> If the government of the Northwest had been one of laws, and not of men, this specific provision would have made the territory free soil and would have relieved the inhabitants from all interest in the "peculiar institution." But the laws never execute themselves--least of all in frontier communities.[15]

Some historians stress that article six of the Ordinance of 1787, which forbade slavery and involuntary servitude, was a progressive feature in the Territory.[16] They do, however, acknowledge that this article, although prohibitive, was not preventative. Slavery did exist in the Northwest Territory and the Ordinance was a manifestation of the ambiguity which existed between freedom and slavery in the Old Northwest. In the minds of

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[15] Frederic Austin Ogg, The Old Northwest A Chronicle of the Ohio Valley and Beyond (New Haven, 1919), 180-181.

[16] Paul Finkelman, "Slavery and The Northwest Ordinance," "Journal of the Early Republic," 6 (Nov./Dec., 1986),343-370. See also: Edward Coles, History of the Ordinance of 1787 Read Before the Historical Society of Pennsylvania June 9, 1856 (Philadelphia, 1856); B. A. Hinsdale, Chapter 18, "Slavery in the Northwest...," The Old Northwest With a View of the 13 Colonies As Constituted by the Royal Charters (New York, 1888), 345-367. Hinsdale writes: "The surprise that historians still continue to express the ease and celerity which the Ordinance of 1787 was enacted culminates when they come to the sixth article of the compact."

the settlers at least three sections adddressed the issue.

The famous article six read, in part:

> There shall neither be slavery nor involuntary servitude in the said territory, otherwise than in punishment of crimes, whereof the party shall have been duly convicted.[17]

But article two protected the rights of the settlers to their property, guaranteeing, "No man shall be deprived of his property... ." It explained further:

> And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made or have in force in the said territory, that shall in any manner whatsoever, interfere with or affect private contracts, or engagements bonafide and without fraud, previously formed.[18]

Another provision of the Ordinance proclaimed that the French and Canadian residents and the Virginian emigrants in Vincennes and Kaskaskia could hold and transfer property according to the laws and customs then in force in Virginia. This applied to personal and real

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[17] Pennsylvania Packet and Daily Advertiser (Saturday July 21, 1787) [no vol. no.] No. 2639, [2]. The Packet is located in the Indiana Historical Society; "An Ordinance for the Government of the Territory of the United States Northwest of the River Ohio," (Boston) Old South Leaflets No. 13, n.p. in Old South Leaflets (25 vols. Boston, n.d.); The Northwest Ordinance 1787 A Bicentennial Handbook, ed. R. M. Taylor (Indianapolis, 1987).

[18] Ibid.

property.[19] Thus, to the settlers of the Territory, article six did not totally resolve the issue.

Furthermore, historian Charles Kettleborough, stated that the Ordinance inferentially recognized slavery since other provisions of the Ordinance based apportionment of representatives of the Territory on the number of free white male inhabitants, required sixty-thousand free inhabitants prior to the admission of states and restricted suffrage to white males "twenty-one and upward."[20]

Settlers of the Northwest Territory wrestled with the ambiguity. In 1793, the governor of the Nothwest Territory, Arthur St. Clair, sent his interpretation of article six to Luke Decker, a first cousin of John Kuykendall, Jr., and a judge of the Court of the Common Pleas in Knox County. St. Clair assured Decker that those who held slaves in the Territory prior to congressional passage of the Ordinance were entitled to hold them as slaves, but those who brought slaves into the Territory after its passage were not.[21]

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[19] Ibid. See also Charles Kettleborough, Constitution Making in Indiana 1780-1850, I, 27 note 17.

[20] Ibid. See also Paul Finkelman, An Imperfect Union Slavery, Federalism, and Comity (Chapel Hill, 1981), 84.

[21] St. Clair to Luke Decker, Cincinnati, October 11, 1793 in Arthur St. Clair, The Life and Public Service of Arthur St. Clair with His Correspondence and Other Papers, ed. William Henry Smith (2 Vols, Cincinnati, 1882), II, 318-319.

In 1794, in a letter to George Turner, a judge of the General Court of the Northwest Territory, St. Clair further elaborated his interpretation of the meaning of article six. He reminded Turner that slavery had been authorized in the Territory under the dominion of France and that it continued under Great Britian and under Viriginia. He also declared to Turner that those who settled in the Northwest prior to the adoption of the Ordinance were guaranteed the rights to their property under the custom and laws of Virginia.

Moreover, as St. Clair continued, "Slaves were then a property acquired by the inhabitants conformally to law, and they were to be protected in the possession of that property." The governor further maintained that if the settlers had been protected up to then, "they are still to be protected." He clinched his argument, "Had the Constitution [the Ordinance] the effect to liberate those persons who were slaves by the former laws, as no compensation is provided to the owners, it would be an act of the Government arbitrarily depriving a part of the people of their property."[22] Of the status of blacks who came into the Territory after the passage of the Ordinance, St. Clair argued that, "It must be construed to intend that, from and after the publication of the

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[22] Ibid., 330-332.

said Constitution, slaves imported into that Territory should immediately become free."[23]

In 1795, John Jay, the American emmissary to England, concluded a treaty with Lord William Wyndham Grenville, the British Secretary of Foreign Affairs. Although it was primarily a treaty for nagivation rights, one provision guaranteed that British citizens in the Northwest Territory could "enjoy, unmolested, all their property of every kind... ."[24] Hence, this treaty protected slave property in the northern part (Michigan) of the Territory.[25]

When the issue of the freedom of a slave came before the Justice of the Michigan Territory, Augustus B. Woodward, in 1807, he held that "a man who owned slaves in Michigan before 31 May 1793 had a legal right to them under the Jay Treaty." He also held that persons who owned slaves in Michigan before 11 June 1796, could claim their services until the blacks reached age twenty-five,

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[23] Ibid.

[24] [John Jay and Lord Grenville],"Article Two," Treaty of Amity, Commerce, and Navigation Between His Britiannic Majesty and The United States of America, Conditionally Ratified By The Senate of The United States, At Philadelphia, June 24, 1795 [Jay's Treaty], (Philadelphia: Henry Tuckniss for Mathew Carey, Aug. 12, 1795), 6.

[25] Indiana Territory originally included the present states of Indiana and Illinois and part of Michigan. The guarantee was to British citizens living in Michigan.

at which time they would become free under Canadian law."[26]

The ambiguity of the Ordinance, complicated by Jay's Treaty, continued to plague the inhabitants of the Northwest Territory. In 1796, uneasy and confused residents of 'the Illinois' petitioned Congress to legalize slavery. One interesting feature of this petition was its reference to the case of James Somerset and its plea that Congress pass a legislation encapsulating the "...maxim laid down [in the Somerset case]."[27]

Somerset, a slave whom a Virginian took to England, subsequently ran away from his owner. During the case demanding Somerset's return, the Justice, Lord Mansfield, rendered an ambiguous decision. He declared that Somerset was free when he set foot on English soil, but that his owner had a right to his service. Hence the petitioners from 'the Illinois' asserted:

> It is laid down by Blackstone in his Commentaries... "That a slave or negro, the moment he lands in England, becomes a freeman, that is, the law will protect him in the enjoyment of his person and property. Yet, with regard to any right which the master may have acquired to the perpetual service of John or Thomas, this will remain exactly in the same state as before; for this is no more than the

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[26] Paul Finkelman, An Imperfect Union, 85.

[27] This petition is printed in the American State Papers: Public Lands, I, 61.

> same state of subjection for life, which every apprentice submits to for the space of seven years, and sometimes for a longer term. And whatsoever service a negro owed to his American master, the same is he bound to render in England."

The petitioners further maintained, "It may then be clearly deduced from the above authority, that any person purchasing or otherwise acquiring a slave in any of the States is entitled to his perpetual service in any of the States [and] is [also] entitled to his perpetual service in this Territory as a servant."[28]

Not only did the Illinoians place slaves, which they used as a synonym for Negroes, in a subservient and inferior position, but they clearly refered to the importation of slaves. The historian Don Fehrenbacher stressed that the slave-trade clause in the Constitution explicitly referred to the states then in existence restricting the operation of the clause to the original states. Specifically, the article read:

> The migration or importation of such persons as any of the States now existing think proper to admit shall not be prohibited by the Congress prior to year one thousand eight hundred and eight.[29]

But since the Ordinance guaranteed settlers the rights to their property under the custom and laws of Virginia,

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[28] Ibid.

[29] Don E. Fehrenbacher, The Dred Scott Case, 26.

Virginia emigrants to the Northwest viewed the Territory as an extension of the state of Virginia. They, therefore, believed, as would have emigrants from other original states allowing slavery, that they had a legitimate right to import slaves into the Territory.

Four years after the Illinois petition, President John Adams appointed William Henry Harrison, of Virginia, the first Governor of Indiana Territory. Harrison must have agreed with the premise of the Illinoians who petitioned Congress in 1796. Dorothy Burne Goebel, in a biography of Harrison's political career, noted: "In Indiana, it seemed the majority of the population favored slavery; this was probably the factor that crystallized Harrison's views so that he aligned himself definitely with the proslavery faction and publicly favored the introduction of slavery."[30]

Harrison arrived in Vincennes on July 4, 1800. Not six months later, on October 1, 1800, residents sent the first petition requesting that Congress modify article six and admit slavery in Indiana Territory. Harrison, by forwarding the petition for modification of article six to Congress, recognized congressional authority, but by 1802, he asserted the constitutional rights and sovereignty of the people of the Territory.

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[30] Dorothy Burne Goebel, William Henry Harrison A Political Biography (Indianapolis, 1926), 76.

Reportedly encouraged by residents of the Territory, he called a convention to consider the propriety of repealing article six. As a result of this convention, Harrison forwarded a petition to Congress requesting a suspension or modification of article six indicating that it was the people's choice.[31] The petition was unfavorably reported on by a House Committee chaired by the Virginian John Randolph on February 8, 1803. On March 2, 1803, the House denied the petition.

On April 30, 1803, just over two months after Randolph's committee reported unfavorably on the petition for slavery, the United States signed a treaty with France for the Louisiana Purchase. The Purchase further fueled the argument for slavery in Indiana but also

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[31] Indiana Territory, Journal of the Proceedings of the Executive Government of Indiana Territory July 4, 1800 to November 2, 1823, 2 Archives Division Commission on Public Records Indiana State Library; Transcription of the Executive Journal, November 22, 1802, 7 Archives Division; William Wesley Woolen, Daniel Waite Howe and Jacob Piatt Dunn, eds., "Executive Journal of the Indiana Territory 1800-1816," Indiana Historical Society Publications 3 (Indianapolis, 1900), 113-114. For a list of some of the delegates to the convention see The Sentinel (Indianapolis) (January 13, 1886). Convention delegates were: William Henry Harrison, Luke Decker, Francis Vigo and William Prince of Vincennes; Robert Morrison or Randolph County; and Major John Moredock, Jean Francois Perrey, and Shadrach Bond of St. Clair County. Prince and Decker were involved in Phillis' cases. The petitions of October 1, 1800 and December 1802 are printed in Jacob Dunn, "Slavery Petitions and Papers," in Indiana Historical Society Publications, 2 (Indianapolis, 1894), 455-470. The reports on the congressional proceedings are printed in the American State Papers: Public Lands, I:146.

fanned a sectionalism which had emerged in the western counties of Randolph and St. Clair. This sectionalism was mirrored in the North/South agitation over slavery that preceded the Civil War.

Even before the purchase of the Louisiana, there was agitation in the western counties for division of the Territory presumably with some areas free and others slave.[32] Harrison opposed division and quickly took measures to establish slavery in the Territory, which he believed would eliminate the cause for division and advance his own pro-slave position.

In September 1803, he and the Territorial Judges Thomas T. Davis, John Griffin and Henry Vander Burgh, took measures to maintain slavery in the Territory. They passed the first indenture law in Indiana Territory, "An act concerning the introduction of negroes and mulattoes...adopted from the Virginia code." As previously noted, part of the second article of the Northwest Ordinance assured settlers the sanctity of private contracts and "engagements bonafide and without fraud, previously formed." The law of 1803 clarified that article two applied to contracts for long-term labor. It stated that "all negroes and mulattoes," who shall come

[32] American State Papers: Public Lands, I:68-70.

into the Territory under contract should serve their masters for the terms of the contracts."[33]

This act, and the subsequent indenture acts of 1805 and 1807, were apparently passed to respond to the provision of the second article of the Northwest Ordinance; and it may not have been coincidental that they were adopted from the Virginia code. Harrison and two of the Judges were from Virginia and well acquainted with the slave codes in that state.

An even more poignant point about the indenture laws was that they were directed at "Negroes and Mulattoes (and other persons) not being citizens of the United Sates of America,)... ." Moreoever, these "other persons" were subject to the indenture laws if they owed "service or labor in either of the states or territories of the United States, or for any citizens of the...states or territories... ."[34] Hence, even the wording of these laws forecasted the sentiments that Taney echoed in the Scott decision. The Chief Justice later pronounced that blacks were not members of the body politic, that they were not citizens of the United States, that "they were considered as a subordinant and inferior class of being...and had no privileges but such as those who held

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[33] See Francis S. Philbrick, The Laws of Indiana Territory 1801-1809 (Indianapolis, 1931), 42.

[34] Philbrick, The Laws of Indiana Territory, 42, 136-137, 523.

the power and the government might chose to grant them."[35]

However, not all those who held the power and the government supported the indenture laws. Clark County residents petitioned Congress not to permit slavery in the Territory and charged Harrison with nepotism. They even requested the appointment of a governor whose "principles were not repugnant to Republicanism and with principles and sentiments more congenial with those of the people."[36] It should be noted here that the antislavery spirit and the opposition to the indenture laws by various residents of the Territory were not a manifestation of a liberal support of freedom for blacks. John Badollet, a foremost anti-Harrisonian and antislavery pleader, ridiculed the indenture law that required blacks to sign contracts, signaling his assumption that they were of an inferior status if not inferior beings.[37] But still there was an antislavery spirit.

Nonetheless, Harrison and the judges, the legislative group under stage one, passed the indenture law on September 22, 1803 which became effective on

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[35] Taney quoted in Hopkins, Dred Scott's Case, 62-63.

[36] For a discussion of this petition see Goebel, Harrison, 78-80.

[37] The Correspondence of John Badollet..., 94.

November first. On October 26, 1803, Congress ratified the treaty between the United States and France for the Louisiana Purchase. Harrison believed that he would control part of the Louisiana Territory. On October 26, 1803, Harrison wrote Thomas Worthington, a representative in Congress from Ohio, "It is generally supposed that what is called Upper Louisiana...will be attached to Indiana Territory."[38] The same day that Harrison wrote this letter, the Senate tabled a petition from residents of 'the Illinois' requesting attachment to the new Purchase because of "certain inconveniences and embarrasments" they were "subject [to] under the same Government with the eastern extremity of the... Territory."[39]

It was also in the month of October 1803 that Harrison made his position on slavery clear. Sometime in the fall of that year, Harrison sent Benjamin Parke, the Territory's delegate to Congress, to get an endorsement from Thomas Worthington. When Worthington refused to offer support on the slavery issue, Harrison wrote nearly the same sentiments that Taney and Douglas expressed more

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[38] Harrison to Worthington, Vincennes, October 26, 1803. Harrison Collection Miscellaneous Indiana Historical Society.

[39] See Francis S. Philbrick, The Laws of Indiana Territory, 1800-1809 (Indianapolis, 1931), xxii-xiv.

than fifty years later in the Scott decision and the Freeport Doctrine.

"I am sorry," Harrison told Worthington, "you are so much opposed to [the introduction of slavery in Indiana Territory]... ." The governor elaborated further:

> But more so on account of the opinion you have given that the consent of the State of Ohio is necessary before we can have slaves in this Territory--You certainly did not consider this subject sufficiently or you would not have given such an opinion. The Articles of Compact (so called) are made between the U.S. & each particular State to be formed out of the then North Western Territory & the words "mutual Consent" mean nothing more, certainly, than the consent of the Contracting parties--it is true that by Construction & by construction only & not by the plain & obvious meaning of the words--they are construed so as to make it necessary to have the consent of all the several states which may be formed as above to any alteration in the Articles which directly affect the interests of all--but on a question like the present in which the state of Ohio has no more interest or concern than the state of Kentucky, Vermont or any other state in the Union a reference to either of those states would be as proper as to the state of Ohio... .[40]

Following the drafting of the indenture law of 1803, Congress returned to the issue. On February 17, 1804, Representatives Caesar Rodney of Delaware, John Rhea of Tennessee, and John Boyle of Kentucky reconsidered a petition which had been submitted in 1803. They recommended that the Articles of Compact be modified to

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[40] "William Henry Harrison to Thomas Worthington," October 26, 1803, Harrison Collection Miscellaneous Indiana Historical Society. A printed version of this letter is in "Letters of William Henry Harrison to Thomas Worthington, 1799-1813," ed. John D. Barnhart, Indiana Magazine of History 47 (March, 1951), 53-84.

permit slaves "born within the United States, from any of the individual states" to assume that status in Indiana Territory. [41]

The Senate, however, tabled the petition. But on March 26, 1804, Congress gave Harrison and the Judges control over the Upper Louisiana and permitted slavery to continue as it had before the United States acquired the Territory. Before 1804, Harrison had opposed a transition to a second grade government. But perhaps inspired by the acquisition of control in the Upper Louisiana, Harrison now favored a move to the second grade.

Under a first grade government Harrison and the Judges wielded all power---executive, legislative, and judicial. They were responsible only to the federal government. Under a second grade, a representative government would be formed and Congress would have no veto power over the laws created in the Territory.

The astute Harrison must have realized the political expediency of moving to a second grade government, especially after the increasing call for division in Illinois and the rising tide of opposition to slavery in

[41] "Reports of Committees of the House of Representatives Document #172 On the Subject of Slavery, elective franchise, and Public lands in Indiana, 1804," American State Papers: Miscellaneous, I: 357; United States, Eighth Congress 1803-1805 Congress of the United States Biographical Directory of the American Congress 1774-1971 (Washington, D. C., 1971).

Clark and Dearborn Counties. Hence, Harrison may have believed that he could curtail the two anti-Harrison groups by moving to the second grade and--through restricted suffrage---secure the dominance in the government of men of his own political and personal persuasion.

So blatant were Harrison's actions that a contemporary accused him of spearheading the introduction of slavery into the Indiana Territory. Of Harrison, the observer wrote:

> Moral chameleon he assumes a variety of appearances to answer his purposes, vulgar with the lowest form of mankind, polite & fascinating with the more refined, he succeeds equally in imposing all. With a fluency of well chosen language he veils a very superficial knowledge, and with despotic self-conceit and clamorous loquacity he reduces modes & solid merit to a mortifying silence. To him must be ascribed [in] the first instance the nefarious and impolitic project of introducing slavery into this Territory wherein he has persisted with an unwearied pertinacity & whereby he has greatly impeded its population and filled it [with] intrigue and discord. To his suggestions or rather directions (the Legislatures...were nothing better than the recorders of his edicts)--must be attributed that disgrace of Legislation, the law concerning the introduction of negroes into this Territory, which contrary to his duty he had the audacity to sanction...[42]

Historian Theodore Pease noted that "the slavery statues of the Territory cannot be understood apart from the social legislation that accompanied them. All were

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[42] John Badollet to Albert Gallatin, Vincennes, November 13, 1809, in Gayle Thornbrough, ed., The Correspondence of John Badollet and Albert Gallatin, 117.

part of a state of mind."[43] Perhaps indicative of this "state of mind," is the manner in which even some historians have interpreted the intention of the indenture laws. Historian R. Carlyle Buley, conceded that having failed to achieve Congressional approval of a suspension of article six Harrison introduced the law concerning servants "to achieve the same end." But he interjected:

> Considering conditions, this notorious indenture law was not so bad. Persons of color were best protected from kidnaping when owned by or attached to some respectable citizen able to protect them. By no means all of the slaveholders were believers in slavery. In many cases the Negroes had preferred coming along with their masters to being sold into slavery or even freed in slave territory.[44]

Another indication of this state of mind is that at some point, the trustees of the Borough of Vincennes at least considered, if not passed, an ordinance strikingly similar to the black codes instituted in the Southern states. Slaves, indentured servants or servants of color whose master or mistress, owner or owners resided outside the Borough of Vincennes were to carry passes bearing the

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[43] Theodore Pease, The Laws of the Northwest Territory 1788-1800 Illinois Historical Collection, 17 (Chicago,1925), 18.

[44] R. Carlyle Buley, The Old Northwest Pioneer Period 1815-1840 (2 vols, Indianapolis, 1950),II, 5-6 note 6. See also Logan Esarey,"Some Unsolved Questions of Our Early History," Indiana History Bulletin, extra number, February, 1924, 56-58. Esarey contended that slavery never existed in Indiana and that blacks remained with their masters for fear of kidnapping, for love or to procure a living.

signature of the masters with written permission from them for the blacks to be in the borough. Any black who failed to carry such a pass and was discovered was to receive thirty-nine lashes. And, like the Scott decision that would come some fifty years later, Harrison and the borough trustees reduced the status of the free black to that of the slave. Servants and free people of color were not to swear by God, Jesus Christ or the Holy Spirit, riot or gather in unlawful assemblies. Punishment for any violation of these codes ranged from twenty-five to thirty-nine lashes and a fine of fifty dollars.[45]

Moreover, that state of mind was a manifestation of the paradox that the Continental Congress and the Constitutional Convention created by their handiworks--the Congress by its exclusion of slavery in the Territory, but its recognition of rights to personal property in the Ordinance on the one hand, and the Convention by its passage of the three clauses related to the "other persons" who were not a part of "the people" in the Constitution on the other. As Roger B. Taney pronounced in the reading of the Scott decision, the framers of the Constitution "perfectly understood the

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[45] Folder marked "Ordinance" Vincennes Borough Records Byron Lewis Library Vincennes University. There was no indication of whether the trustees of the borough passed this ordinance. The first ordinances of the borough were passed in 1805 and approved in 1807. See Goodspeed, History of Knox and Daviess Counties, Indiana (c.1886 reprint Chicago, 1970), 246.

meaning of the language they used, and how it would be understood by others; they knew that it would not in any part of the civilized word be supposed to embrace the negro race...." Furthermore, Taney interjected, "They spoke and acted according to the then established doctrines and principles, and in the ordinary language of the day, and no one misunderstood them." Blacks, Taney continued, "were never thought of or spoken of except as property... ."[46]

If the executive of the Indiana Territory failed to verbalize it, his actions indicated that he believed in the dictum laid down by the founding fathers. Harrison had no qualms about trading real property for 'chattle property.' When he was trying to sell property in Virginia in 1806, he told his friend Colonel James McHenry, that he would exchange the property for blacks. "I would freely take one or two negroes," he told McHenry, "either male or female...it makes no difference whether they are slaves for life or only serve a term of years."[47]

Harrison surrounded himself with men of his political orientation and personal convictions. Most of the judges, attorneys and legal counselors involved in

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[46] Benjamin Ringer, 'We the People' and Others, 105-106.

[47] William Henry Harrison to James McHenry, Vincennes, May 10, 1806. Harrison Collection Miscellaneous Indiana Historical Society.

the case of Phillis and her children supported slavery in Indiana Territory. Most of them held slaves, were from Virginia and/or were members of the 'Harrison party.' Therefore, there was no reason to expect any of them to support freedom for blacks in the area. Moreover, as one observer noted, Davis, Griffin and Vander Burgh, three of the key figures in Harrison's group, were "certainly inferior to the judges of the [Northwest] Territory" in "general culture, or at least in general schooling."[48]

Thomas Terry Davis, Chief Justice of the General Court of Indiana Territory, was from Virginia, and possibly from Hampshire County, the same county that Phillis and her children were from.[49] He was very closely associated with Harrison. One observer asserted that Davis' "advancement may be attributed primarily to Harrison's friendship, for there [was] no other evidence of his talents or attainment."[50]

Although a political ally of Harrison's in most matters, by 1806, Davis did not support the introduction of slavery because he viewed it as a cause of dissention. He wrote John Breckenridge, the United States Attorney

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[48] Philbrick, The Laws of Indiana Territory, xv.

[49] West Virginia Federal Writers Project. WPA, The First Census of Hampshire County, 1792 (Romney, West Virginia, 1937), 13,18. Three whites and no blacks were listed in the household of this Thomas Davis. There were also Terrys living in the county.

[50] Philbrick, The Laws of Indiana Territory, xvi.

General, "If you have any influence for God,s [sic] sake dont [sic] let Congress introduce Slavery among us. I dispise [sic] the Colour & situation." The judge cautioned, "If they Humor the St. Vincennes party they will have the whole Territory in Confusion."[51]

Virtually nothing is known of John Griffin except that he was a Virginian and a close friend of Harrison's. By 1808, however, Griffin was among other citizes who petitioned the General Assembly not to permit slavery in the Territory.[52] Henry Vander Burgh, a veteran of the Revolutionary War, came from New York prior to the passage of the Ordinance, and brought slaves with him.[53] He married into a French family who held slaves and in 1794, was involved in litigation over the legal status of two blacks, Peter McNully and his wife Queen, whom he claimed as slaves.

George Turner, a Judge of the General Court of the Northwest, pronounced Peter and Queen free by virtue of

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[51] "Judge Davis to the Attorney General," Jeffersonville, IT, Jany 26th, 1806, in The Papers of the United States, Vol. 7 Th Territory of Indiana 1800-1810, Part Three Papers Relating to the Second Administration of Governor Harrison, 1803-1806, ed.Clarence E. Carter, (18 vols., Washington, D. C., 1934), 335.

[52] Indiana Territory, Journals of the General Assembly of Indiana Territory, ed. Gayle Thornbrough and Dorothy Riker, Indiana Historical Collection 32 (Indianapolis, 1950), 183.

[53] Logan Esarey, History of Indiana From Its Exploration to 1922 (4 vols., Dayton, 1924), I, 156.

article six. Vander Burgh relentlessly maintained that they were slaves. This case precipitated St. Clair's interpretation of the meaning of the Ordinance. Subsequently Queen disappeared in Kentucky, while Peter was indentured for five years, and Arthur St. Clair severely reprimanded Turner who later resigned.[54]

Harrison did not reprimand Davis or Griffin but he replaced them with men who favored slavery and who were his close companions. Waller Taylor, who sat during Peggy's hearing in 1806 and at Hannah's trial in 1808, succeeded Griffin in 1806. Taylor, from Virginia, was a trained lawyer and served in the Virginia legislature. In 1812, he would be an unsuccessful Democratic contender for the Territory's delegate to Congress against the antislavery candidate Johnathan Jennings.[55]

Benjamin Parke, orginially from New Jersey, studied law in the office of James Brown of Kentucky and later

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[54] Arthur St. Clair, The Life and Public Service of Arthur St. Clair, 342; "Deposition of Christopher Wyrant," Sheriff, Knox County, May [?], 1795 Northwest Territory Collection Indiana Historical Society; Copy of Letter, "Henry Vander Burgh to John Mills," 29 June 1795 Henry Vander Burgh Collection Indiana Division Indiana State Library. Vander Burgh advised Mills that he was sending statements against Turner; Leander J. Monks, Courts and Lawyers of Indiana Territory, I, (3 vols. Indianapolis, 1916), 13. Turner also attempted to distill the illicit liquor traffic to the Indians. Vander Burgh was licensed to sell liquor to the Indians.

[55] Philbrick, The Laws of Indiana Territory, xvi, ccxxvii. Taylor became a judge on April 17, 1806, and served until approximately December 11, 1816. Hannah was another daughter of Phillis.'

became his partner.[56] Parke replaced Davis and as previously mentioned, he was a delegate to Congress from the Territory and as such appealed to Thomas Worthington to support the introduction of slavery in Indiana Territory in 1803. In 1804, the year his native state abolished slavery, Parke replaced John Rice Jones as attorney general of Indiana Territory. Hence Parke had the dubious distinction of prosecuting Vanorsdel in behalf of Phillis and her children, and later sitting on the bench during Hannah's case.

From 1805 to 1807, Parke served as a representative in the Territorial Legislature. In 1807, he chaired a committee in the United States House of Representative which recommended allowing slavery in Indiana Territory. He clearly established his attitude toward the introduction of slavery into the Territory. John Badollet, an antislavery administrator in the Territorial government called Parke Harrison's "worthy coadjutor" in the introduction of slavery and observed that the two introduced a toast in favor of slavery during a fourth of July celebration.[57]

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[56] James Brown to Benjamin Parke Esquire, German Coast 30 miles above New Orleans, August 6, 1805, in Papers Collected by Porter Albert G. Porter Papers Folder marked "Papers of Benjamin Parke," Indiana Historical Society.

[57] John Badollet to Albert Gallatin, Vincennes November 13, 1809 in, The Correspondence of John Badollet, 117.

Just as the judges were predisposed to the introduction of slavery into the Territory, the attorney generals were also. Though the office of attorney general was a federal position, the governor, not the president, appointed them. Harrison seemingly appointed only those who held the same political views as he did. John Rice Jones, a Welshman, who located in Vincennes in 1786, served as the Territory's first attorney general, from 1801 to the late summer of 1804. Jones' signature appeared first on the petition of October 1800 which requested that Congress legalize slavery in the Territory.

Jones played a prominent part in the political and legal history of the Territorial period. He served as secretary to the Vincennes slavery convention in 1802, and in 1805, the President of the United States, Thomas Jefferson, appointed him to the Legislative Council. Jones held a number of slaves in Vincennes as he did later, when he moved to Kaskaskia and then to Ste. Genevieve in the Louisiana Territory.[58] By 1807, Jones, originially Harrison's friend, led the anti-Harrison faction in the Territory.

Parke, mentioned elsewhere, was replaced by Thomas Randolph, another close political associate of Harrison, Davis, and Taylor, and a fellow Virginian, who served as

[58] Philbrick, The Laws of Indiana Territory, ccxxix.

the third attorney general of Indiana Territory. As such he prosecuted the personal liberty case of Peggy and the indenture case of Hannah. He arrived in the Territory only a short time before his appointment as attorney general. He attended William and Mary College, where he studied law and was a member of the Virginia Legislature. In 1809, he was a candidate of Harrison's proslavery party as a delegate to Congress but was defeated.[59]

Henry Hurst, the Clerk of the General Court, served from January 14, 1801 to approximately December 11, 1816. Virtually nothing is known about Hurst before he came to Vincennes, but he had been described as "far from impeccable."[60] In 1800, a grand jury indicted him for accepting a bribe from an alleged thief, Samuel Gregory. In violation of a statue which specifically forbade the Clerk of the General Court to practice as an attorney, Hurst served as prosecutor in the Gregory case. Although he received a fee from the County to prosecute Gregory he failed to do so and the defendant somehow escaped jail. Hurst was a very close ally of Harrison.[61]

Although these men, specifically Vander Burgh, Jones, Taylor, Randolph, Parke and Hurst, and others in

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[59] Ibid., xvii-iii, ccxxvii, ccxlii.

[60] Ibid., ccix.

[61] General Court of the Northwest, United States v. Henry Hurst February 2, 1800. Box 1 #2 Archives Division Commission on Public Records.

Harrison's coterie, clearly revealed their position on the slavery issue, their position on the fugitive slave question seems more hazy. They should have been well acquainted with the fugitive slave law. The second part of article six of the Ordinance of 1787, provided for the return of fugitive slaves who escaped into the Northwest Territory. The fourth article of the Constitution, also adopted in 1787, provided for the turning over (renditioning) of fugitive slaves from anywhere in the United States and the Territories.[62]

The congressional act of 1793, ironically enacted because of the kidnapping of a free black, provided for the return of fugitives from justice and from labor.[63] Again, this act clearly made reference to fugitives who escaped into another state or territory.[64] This legislation, which should have eliminated numerous cases, failed to achieve this end. In fact, the cases under consideration in this paper fall under that category. Although it was established during the first trial that

[62] Salmon P. Chase, ed. The Statues of Ohio and of the Northwestern Territory Adopted or Enacted from 1788-1833 Inclusive (3 vols. Cincinnati, 1833-1835), I.

[63] In the context of the day, fugitives from justice were criminals and fugitives from service or labor were slaves.

[64] Statues At Large of the United States of America 1789-1873 (17 vols. Boston 1850-1873), I, 302.

Phillis and her children did not escape from Virginia, the Court allowed the case, to continue.

Thus when the cases of Phillis and her children came before the General Court, the governor, judges and other public officials, including relatives of John Kuykendall, Jr., were trying to build a slavocracy in the Territory. They also demonstrated a willingness to ignore existing laws and define their own "traditions"--traditions legitimized by the Constitution--to support slavery. These officials were to determine the fate of Phillis and her children. While there were those who opposed slavery in the Territory, they were not in power or were being weeded out by Harrison. Harrison, however was not able to suppress the anti-slavery groups. Thus in the midst of his endeavor to build a slavocracy three distinct groups of opponents emerged, and Harrison and the judges used the trials of Phillis and her children to provide a second-line of defense by redefining involuntary servitude, to serve as a backdoor version of slavery. Subsequently, the General Assembly vigorously, as one historian phrased it, "established a condition of servitude that was the equivalent of slavery."[65] Consequently, the issue of indenture, a mid-way position between freedom and slavery, intruded in the case so that it could not be decided on the basis of whether Phillis

[65] Goebel, Harrison, 77.

and her children were slaves or free, but on the basis of the rights and sovereignty of "the people"--the citizens--to establish their own government.

A voice was heard in Ramah, weeping and much wailing; it was Rachel weeping for her children and she was unwilling to take comfort, because they are no more.

Matthew 2:18

Prologue

## Phillis: A Black Woman's Perseverance Against All Odds

Phillis[1] was born a slave, probably in Western Virginia or Southwestern Pennsylvania in the late 1750's

[1] It was not unusual for women in Phillis' position to sue for their freedom. In Republica v. Betsy, the Court found that Betsy was not recorded in compliance with the act for gradual emancipation, therefore Betsy was "absolutely free." Dallas (Pa), 439; Lucy was registered under the wrong name and declared free. See Lucy v. Pumfrey Addison (Pa), 380. Sylvia, a slave in Virginia, worked out-of-state for three years. When she returned, she sued Coryell for her freedom claiming that since she was out-of-state for three years, without her owner, she was free. Sylvia lost this suit. See Federal Case No. 13,713 in 1 Cranch's Circuit Court,(US), 32; Lucy won her suit for freedom because her owner failed to take an oath within sixty days after settling in Virginia. An act passed by Virginia in 1792 required that anyone who emigrated to Virginia bringing slaves to take an oath within sixty days after bringing the slaves in. See Lucy v. Slade Federal Case No. 8,595 1 Cranch's Circuit Court (US), 422. A Pennsylvania Court found that a slave not duly recorded according to the acts of March 1, 1780 and March 29, 1788 was entitled to freedom. See: Commonwealth v. Hester 1 Browne (Pa), 369; In Violet v. Ball, a Court decided that she was not entitled to her freedom after being sent from Washington to Virginia for sale and then returned to Washington eight months later without being sold. See: Federal Case No. 16,954 2 Cranch's Circuit Court (US), 102. Nearly nothing is known about black women, in their historical context, in American society, prior to the abolitionist movement. Phillis Wheatley, the colonial poet is most widely known. During the abolitionist movement, however, black women exerted an aggressiveness that was recognized nationally. Hence, we hear of abolitionists who were black and female like Frances Ellen Watkins Harper and Harriet Tubman, and black matriarchs of the women's movement like Sojourner Truth. Less well known female rights advocates like Sarah Mapps Douglass, and slave women and slave mothers

or early 1760's. On June 15, 1776, Daniel Brown of West Augusta, [West] Virginia, gave to his daughter, Elizabeth and her husband, John Kuykendall, Jr. of Hampshire County, Virginia "a negro woman named Phillis and her two children, Kate and Bob."[2]

The Virginia census of 1792 shows that there were six blacks in the household of John Kuykendall, Jr. between 1782 and 1785. The Kuykendalls were no different from their neighbors and relatives. Many settlers along the Appalachian mountain chain and in the Shenandoah Valley owned small numbers of slaves. One Kuykendall descendant noted, "Many of the Kuykendalls have been

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struggled for freedom for themselves and their children, like Jane Johnson, Margaret Garner, and Linda Brent. Because there is very little known about black women during the Colonial and Federalists Eras, their roles have been generally neglected. Yet, as legal records show, there were black women, like Phillis, who challenged the paradox of freedom and slavery in America, long before the Harpers, Truths, and Johnsons. Republica v. Betsy, (1789); Lucy v. Pumfrey,(1799); Sylvia v. Coryell, (1801); Lucy v. Slade, (1807), Commonwealth v. Hester, (1811) and Violet v. Ball, (1814) are but a few examples. Prior to and during the time that Phillis' case was before the General Court, several other black women were involved in litigations against Knox County residents. Although some were unsuccessful, they were still heroic in their stand against their 'masters.' That they dared, in the face of oppressive and repressive circumstances, to do anything is certainly laudable.

[2] See "[Copy of the] Deed of Gift [Daniel Brown to daughter Elizabeth and her husband John Kuykendall, Jr.]," dated June 15, 1776 from Book 5 Hampshire County Deeds in the Personal Papers of Helen Sole Vincennes, Indiana.

slave owners in New York, New Jersey, Pennsylvania, Virginia and the Carolinas in colonial times... ."[3]

Although there were six blacks in the Kuykendall household between 1782 and 1785, it is unlikely that Phillis' younger children, Peggy, George and Hannah were among them. In 1808, at her last trial, Peggy was referred to as an infant under twenty-one. Both George and Hannah were indenture likely according to Territorial law which provided that females under fifteen when brought into the Territory were to serve until thirty-two years old and males under fifteen were to serve until they were thirty-five.[4] It is probable that Peggy, George

[3] George Benson Kuykendall, The History of the Kuykendall Family Since Its Settlement in Dutch New York in 1646 with Genealogy As Found in Early Church Records State and Government Documents (Portland, Oregon, 1919), 505. For a brief description of the settlers in this area such as the Kuykendalls, and their cousins the Deckers, Cunninghams, and Van Meters, see J. C. Sanders, "Old Fort Ashby," in West Virginia History 1 (June, 1940), 104-118. The census of 1792 was made up of tax lists and other data taken from records in 1782 and 1785. See West Virginia Federal Writers Project, Works Progress Administration [WPA], The First Census of Hampshire County, 1937.

[4] Section five of the indenture act of 1805 read: "That any person removing into this territory, and being the owner or possessor of any negro or mulatto as aforesaid, under the age of fifteen years, or if any person shall hereafter acquire a property in any negro or mulatto under the age aforesaid, and who shall bring them into this territory, it shall and may be lawful for such person, owner or possessor, to hold the said negro or mulatto to service and labour, the males until they arrive at the age of thirty-five, and the females, until they arrive at the age of thirty-two years." Section thirteen of this law provided that male and female children "born in the territory," whose parents were

and Hannah were born after John Kuykendall, Jr. died in 1785. The year of birth of George is estimated as 1786, and as 1788 for Peggy. When Hannah was born is not clear, but in 1808, she was still referred to as a mulatto "girl."

Nothing more is known of Phillis until March 8, 1804 when she brought charges against Simon Vanorsdel in behalf of herself and two of her children, Peggy and George. Nothing more is recored about her older children, Kate and Bob. What is known, however, is that Phillis, who subsequently initiated the first three litigations in behalf of herself, Peggy, and George, not only had to contend with Territorial officials and Territorial politics which favored enslaving blacks, but with men, directly involved in the case who were of the same political position as the territorial officials.

Jeremiah Claypoole, a step-cousin of John Kuykendall, Jr., played a prominent role in the first two fugitive slave trials. He testified that he brought Phillis, Peggy and George to Knox County. Their arrival probably would have been around 1798.[5] During the

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indentured, were to serve until ages thirty and twenty-eight, respectively.

[5] In 1798, John Cleves Symmes, a judge of the General Court of the Northwest Territory instructed Jeremiah Claypoole to appear before the General Court. See Territory of the United States North West of the River Ohio. General Court of the Northwest Territory. "U. States Subpo: to Jer: Claypole [sic] to Appear Instanter." signed Dan'l Symmes, Clk, Executed by

trials of Phillis, Peggy and George, it seems that Claypoole tried to help by claiming that he owned Phillis, Peggy and George. Phillis had at least two mulatto children, George and Hannah. It is likely that a white man, perhaps even Claypoole, from Hampshire County was their father. Peggy, although described as a "negro girl," may have been a dark-skinned mulatto.

During the second trial, it appears that Phillis was comfortable seeking the aid of Claypoole. But while Claypoole did try to rescue Phillis, Peggy and George, from their dilemma, he did not come to their aid because he was adversed to slavery. He held slaves in Virginia and in Knox County. A list of heads of household for Hampshire County indicated that in 1782, one black and three whites were in Claypoole's household. On January 6, 1784, he sold to John and Luke Decker "one negro woman named Rachel and her children with their future increase."[6]

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Christoper Wyrant, Sheriff Knox County. Box 1 #74 Archives Division Commission on Public Records Indiana State Library. John Cleves Symmes, Senior Judge of the General Court, instructed Claypoole to appear at the Court of Oyer and Terminer and General Gaol delivery to testify before the Grand Jury in behalf of the United States. For Claypoole's testimony see "Deposition [of Jeremiah Claypoole]," September 13, 1804 in United States v. Simon Vanorsdel William English Collection Joseph Regenstein Library The University of Chicago Box 2 Folder 14. All references to this collection in this chapter are in Box 2 and Folder 14.

[6] See: Bill of Sale "January 6, 1784 Jeremiah Claypole [sic] of Hampshire Co. to John Decker of Ohio County and Luke Decker of Hampshire Co. (Bill of Sale) One negro

When he came to Knox County, Jeremiah Claypoole settled in Palmyra Township, an area described as where most slaveholders settled. He was a partner in Purcell and Company with Johnathan Purcell, who also came from Hampshire County, and who was a brother-in-law of John Kuykendall, Jr. It is possible that Purcell and Claypoole came together to Knox County from Virginia. Purcell was also in Vincennes in 1798 and both men purchased and sold blacks in there.[7] Both men were well known to Harrison and the Judges. Jeremiah Claypoole served as a justice of the peace and on February 3, 1801, Harrison had appointed Purcell a Justice of the Quarter Sessions in Knox County.[8]

In 1804, during the time of Phillis' first dilemma, Claypoole and Purcell were involved in litigation over land and a mulatto man called Brooks they had sold to

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woman... . rec[orded] March 10, 1784. Wit[nesses] Sam Dew, Robert Ferguson in Clara McCormick Sage & Laura Sage Jones, "Grantor-Grantee Grantor Deeds," Alphabetical List of Deeds, Leases, Mortgages and Other Instruments Early Records Hampshire County, Virginia Now West Virginia 1782-1860; Hampshire County, West Virginia, "Heads of Families," The First Census of the United States of the State Enumerations: 1782-1785, 28; West Virginia Federal Writers' Project [WPA], The First Census of Hampshire County, 1792, 32.

[7] See: Northwest Territory, "Bond of Robert Buntin, Johnathan Purcell and General Washington Johnston," April 27, 1798, Knox County Collection Indiana Historical Society.

[8] Journal of the Proceedings of the Executive Government, 2.

Daniel Vertner, a merchant and slaveholder in Kentucky. After Brooks ran away from him, Vertner, and his representative William Briggs, sought the aid of Henry Hurst and Benjamin Parke in arbitrating a debt case the Kentuckian brought against Claypoole, Purcell and Brooks.[9]

In 1806, Purcell was also involved in litigation over his sale of two blacks, Ben and his wife, to Manuel de Lisa, a Vincennes merchant. The indenture laws provided for sale of the indenture contract. After purchasing the two from Purcell, de Lisa sold Ben and his wife to a Kentucky slaveholder and a court case was initiated in Kentucky by Ben.[10]

Johnathan Purcell would not play as prominent a role in the case of Phillis and her children as would Claypoole. But there may have been some connection between the case of Phillis and her children and several litigations in Hampshire County, Virginia over property. Johnathan Purcell was involved in one of the cases over land titles in Hampshire County.

One of the Kuykendall descendants observed, "There are a number of deeds along about that time showing among

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[9] Daniel Vertner v. Purcell & Co. [Johnathan Purcell and Jeremiah Claypoole] Box 4 #308. Archives Division Commission on Public Records Indiana State Library. See also Purcell v. Vertner Box 4 # 251.

[10] "Deposition [of Francis Vigo]," August 10, 1806 Knox County Collection Indiana Historical Society.

the Kuykendall's numerous property transfers, and transfers to other names that appear to be relatives." Moreover, as this descendant noted, the changing of land titles seemed to have been partly on account of the deaths of John Kuykendall, Sr., John Kuykendall, Jr. and his brother, Henry Kuykendall, Sr., and "partly because some of the parties interested in property in Hampshire County, Va., had moved to Knox County, Ind., and others to Ross County, Ohio."[11]

In 1804, James Cunningham, another Kuykendall relative sued Purcell over land in Hampshire County. Purcell appeared in a Hampshire County Court on February 14, 1804, just over two weeks before Phillis initiated her case for freedom.

The litigation against Purcell was over lot seven, which had been deeded by Thomas Lord Fairfax to John Kuykendall, Sr. in 1749. John, Sr. thereafter exchanged this property for the smaller lot eight which belonged to his brother, Benjamin. The brothers exchanged the land before "Braddock's War," one party remembered. But while John, Sr. exhanged the land with his brother, he reportedly never conveyed it. When John, Sr. died in about 1780, the land was taken over by his son Henry Kuykendall, Sr. Henry never conveyed the land to his

[11] George Benson Kukendall, History of the Kuykendalls, 50.

uncle Benjamin but evidently transfered a portion of lot seven to his sister, Catherine Kuykendall Purcell, the wife of Johnathan Purcell.[12]

This litigation went on for several years between Benjamin's heirs in Ross County, Ohio, Henry, Sr.'s heirs, in Jefferson and Bourbon Counties, Kentucky, Purcell, and several other of the Kuykendall relatives in Knox County. Apparently Catherine Purcell died in Knox County in 1803, and during the litigation against Purcell in Hampshire County, one party questioned his right to hold the land since Catherine was dead. Subsequently Purcell transfered the deed to James Cunningham, and several of the other Kuykendall relatives in Knox County transfered titled to others.[13]

Johnathan Purcell's son Noah, lived in Palmyra Township, as did Noah's son John. The three Purcells and Jeremiah Claypoole were all associated with Simon Vanorsdel, the man who claimed to act as agent for the heirs of Elizabeth and John Kuykendall, Jr. Both Purcell and Claypoole had a number of Trespass cases against them

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[12] Which Kuykendall-Kirkendall Families Settled in W. Va. and S. W. Penn., Mrs. R. L. Jordan, [researcher], Typescript in the Knox County Public Library, [n.p]

[13] Minutes of the Knox County Court of the Common Pleas 1799-1810. 2 Parts Indiana Historical Records Division of Community and Services Programs. Works Progress Administration. Sponsored By the Indiana Historical Bureau. Indianapolis, 1941. Archives Division Commission on Public Records Indiana State Library.

in which the plaintiff sought damages because the partners failed to perform tasks or to fulfill promises. A number of this cases also involved Simon Vanorsdel.[14]

Among the many litigations against Vanorsdel and one of more of the Purcells and Claypoole was the case of Ewing v. Claypoole, et al. Nathaniel Ewing, a merchant in Vincennes, sued Jeremiah Claypoole, Simon Vanorsdel and James Hall for a total of $345.62 in the General Court. For failing to pay the debt, the Court instructed the Knox County sheriff to sell two mares and three colts belonging to Claypoole, Vanorsdel and Hall.[15]

How or when Simon Vanorsdel became involved with Phillis and her children is not explained. It was five

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[14] See Indiana Territory General Court, "Subpoena" for Simon Vannorsdell, Noah Purcell, et al to testify in a case brought against Joseph Saffen for assault and battery on Pierre Gamlein. Box 4 # 302 March Term 1802 Archives Division Commission on Public Records Indiana State Library. A trespass is "an unlawful interference with one's person, property or rights--at common law, Trespass was a form of action brought to recover damages for any injury brought one's person or property or relationship with another." Trespass on the Case is "the form of action at common law adapted to the recovery of damages for some injury resulting to a party from the wrongful act of another unaccompanied by direct or immediate force or which is the indirect or secondary consequence of the defendant's act. Commonly called 'Case.'"

[15] Indiana Territory General Court, Ewing v. Claypoole, et al Box 9 #629 Sept Term 1806 Archives Division. For a description of the Purcell family linage see: "Family Linage of John L. Niblack, Judge, Marion County Circuit Court, Indianapolis, Indiana, [Typescript signed] November 15, 1973 at Indianapolis Genealogy Division," Indiana State Library.

months after Phillis issued a writ which demanded release from Vanorsdel that he claimed he acted as agent for the heirs of John and Elizabeth Kuykendall and that the blacks were fugitives slaves. He claimed this although the heirs of John and Elizabeth Kuykendall and several relatives of John Kuykendall, Jr. were in Vincennes during the duration of the trials. Simon Vanorsdel may have been a partner in Purcell and Company.[16] If this were the case, it would provide a reason for his involvement with Phillis and her children.

Seemingly, there was ample reason for the Court to question Vanorsdel's integrity. Vanorsdel certainly did not have a reputation for his trustworthiness. For example, one of his associates, John D. Hay, maintained that the merchants in Vincennes, extended Vanorsdel only a "small amount" of credit. "It was small," Hay asserted, because he was not "thought [of as] sure pay."[17]

Between 1802 and 1812, when he moved to Harrison County, Vanorsdel appeared in the General and Common Pleas Court at least thirty-times on a variety of

[16] Vanorsdel purchased large quanities of commodities. For an example see Minutes of the Knox County Court of the Common Pleas, 11. Vanorsdel purchased $83.00 worth of whiskey. This amount was probably too large for him to consume alone.

[17] "Deposition of Samuel McConnel [sic] and John D. Hay," June 16, 1810 in Chancery Court Records Byron Lewis Library Vincennes University Vincennes, Indiana.

charges. Charges included trespass, failure to pay promissory notes, assault and battery and kidnapping. Plaintiffs in the trespass litigations against Vanorsdel sought damages.[18]

Vanorsdel certainly had no qualms about kidnapping blacks. A motive for his kidnapping Phillis, Peggy and George, and later Hannah, may have been for the money it would bring from their sale as slaves. There is no evidence but his word that he was acting as agent for the Kuykendall heirs. During the second trial of Phillis, Peggy, and George, he kidnapped, Abraham, a servant of

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[18] For examples see: Knox County Common Pleas Court, "Capias" [arrest warrant] issued for Vanorsdel on March 3, 1805, Archives Division Commission on Public Records Indiana State Libary. The following examples are in the records of the Indiana Territory General Court, Philip Shively v. Simon Vannorsdall Debt Case March Term 1803 Box 4 # 277. The case resulted from a debt Vanorsdel incurred in 1802 in Louisville; David Jones v. Simon Vanarsdal Trespass on the case Damages $500.00 March Term 1804 Box 5 #362. This case was originally initiated in the Randolph County [Illinois] Circuit at Kaskaskia; Snapp v. Vanasdall Box 10 #800A. Snapp and Mary Reeves as administrators of the estate of Abner Reeves sued Vanorsdel for a debt of $262.00. When Vanorsdall agreed to pay the debt, William Purcell, Jacob Kuykendall, Peter Jones, Daniel Sullivan, Luke Decker and Noah Purcell were among his guarantors. Vanorsdel's father John purchased land for him in Harrison County in 1812. See Jefferson, Indiana Book: Jeffersonville District 7 Tract Book 2 Auditor of the State U.S. Land Dept. Reel 18 (pos), 191. John Vanorsdel purchased Section 2 Township 4S Range 4 E 160 acres Southeast Quadrant on February 29, 1812. It was paid for on May 16, 1817. Jeffersonville, Indiana, "Applications in March 1812," in Applications to Enter Land June 4, 1810-November 18, 1812, 39. John Vanorsdel wrote "I wish to enter the Southeast quarter...March 12, 1812 for Simon Vanorsdel. Archives Division Commission on Public Records Indiana State Library.

William Bullit.[19] Bullit was a merchant of Vincennes who was also from Hampshire County, Virginia.

On the surface, this case seems unrelated to that of Phillis and her children. But the connection was that Jeremiah Claypoole had sold Abraham to Bullit. Claypoole had acquired the child for two hundred a fifty dollars from the overseers of the poor in Knox County which had bound the boy in Orphans Court. William Briscoe, who was Vanorsdel's alleged accomplice in the kidnapping, reportedly took the child to Kentucky and sold him as a slave. Whether the kidnapping was related to or a result of a litigation Bullit had brought against Vanorsdel in April 1805 is unknown.

Phillis, therefore, tenanciously contended with slave sellers, slaveholders, and men who did not have the most reputable reputations among Knox County residents. John Kuykendall Jr.'s relatives were among the slaveholding clique in Knox County and supported Harrison's political ideology.

The Kuykendall relatives were also among the constituents who Harrison appointed to his Territorial administration. Therefore Harrison knew the Kuykendall family and probably knew the heirs who were also in

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[19] Indiana Territory General Court, William Bullit v. Simon Vannorsdell, et al Debt Case Box 6 #445; Indiana Territory General Court, "Recognizance Bond for kidnapping [the servant of William Bullit]," US v. Simon Vanorsdall Box 8 # 587 Archives Division Commission on Public Records Indiana State Library.

Vincennes. Moreoever, the census of 1800 listed only twenty-eight blacks in Vincennes and it is quite possible, since blacks would have been visible among the population, that Harrison knew Phillis and her children and also had knowledge of their status but used the slavery issue to make a point.

Despite this however, Phillis persevered and sought out those who would help her. Although law and custom worked against her, she used whatever means were at her command to help herself and her children. Though Claypoole claimed he owned them, and though Vanorsdel claimed they were fugitive slaves, her position was clear. She was unwilling that she, George, Peggy, and Hannah should be taken as slaves or indentured servants. Phillis challenged the status quo until she could no more.

He's a fool who thinks by force, or skill
To turn the the current of a woman's will.
Tuke

## Chapter One

### The Initial Confrontations: Phillis, Peggy and George

On March 8, 1804, Henry Hurst, Clerk of the General Court of Indiana Territory, by order of the Judges of the General Court, instructed William Prince, then sheriff of Knox County, that he was "justly and without delay to cause to be replevied Phillis, George, and Peggy, persons of Colour of Vincennes. .. who Simon Vannorsdall [sic] of Palmyra Township... has taken... . " Moreover, as the writ to Prince further read:

> unless they were taken by special command of our Judges for the death of man, or for for [sic] any other right for which they may not be replevied according to the law of the land, that we may hear no more clamour thereupon for want of Justice...[1]

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[1] Indiana Territory General Court,"Ho[mines] Reple[giando] March 8, 1804 Executed by William Prince [sheriff]. Sept. Term 1804 Hempstead [lawyer]," Phillis et al v. Simon Vanorsdall Box 5 # 386 Archives Division Commission on Public Records, Indiana State Library. At some point, the names Peggy and George were crossed out on this writ. It is not known who crossed out Peggy and George's names on this writ, whether they were crossed out because the two were minors or whether there was some other reason. Who persuaded Hempstead to bring the charges agains Vanorsdel is not known. It may have been Jeremiah Claypoole. It is unlikely that Hempstead initiated the case of his own volition. Hempstead was not opposed to holding slaves, and he later married into a slaveholding family in St. Louis. See Stephen Hempstead, Sr. Papers Missouri Historical Society; [Stephen Hempstead], "I At Home: The Diary of a Yankee

The language of the writ of homines replegiando indicated that then the Jugdes were unaware of any reason that Vanorsdel should take the mother and her two children. The very nature of the writ, which, in old English law, was a mechanism by which someone could be replevied out of prison or the custody of a private citizens indicated that Vanorsdel had no right to take Phillis, Peggy and George. Moreover, because Phillis brought this action of replevin, although a white had to represent her in her suit, indicates that she and her children may have been free.[2] In effect, through this action, Phillis was replevying herself and her children out of Vanorsdel's custody.

Yet since Harrison and the judges viewed blacks as non-citizens of the United States, Phillis, from their

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Farmer, 1811-1814," Mrs. Dana O. Jansen, ed. Missouri Historical Society Bulletin, 13:30-56; Ibid., 13:288-317. The senior Hempstead mentions slaves belonging to his son Edward. Edward Hempstead's younger brother, Thomas, later married Henry Vander Burgh's daughter, Cornelia.

[2] According to Black's Law Dictionary "In Old English Law," the homine replegiando, is "a writ which lay to replevy a man out of prison or out of the custody of any private person in the same manner that chattles taken in distress may be replevied. A replevy bond is "in reference to the action to redeliver goods which have been distrained to the original possessor of them on his pledging or giving security to prosecute an action against a distrainer for the purpose of trying the legality of the distressed." See Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern by Henry Campbell Black (5th ed. St. Paul, Minn., 1979). Since blacks could not actually sue whites in Court, anyone who acted in their behalf and signed the prosecution was considered a "next friend."

Yet since Harrison and the judges viewed blacks as non-citizens of the United States, Phillis, from their perspective, could not bring any action against a citizen herself. That is, blacks, even in a 'free' state or territory were excluded from the citizenry of the area and the Union. A law enacted by Harrison and the judges in 1802, excluded blacks from testifying in court against whites. The law was directed toward all non-white persons in the Territory. It began, "No negro, mulatto, or Indian shall be a witness... ."[3] They also could not bring actions against whites themselves. Therefore, Edward Hempstead, a slaveholder and a citizen of the United States and the Territory, brought suit in her behalf. Henry Vander Burgh, one of the Judges in Indiana Territory, witnessed the writ which summoned Vanorsdel to appear at the next General Court in April 1804.

There is nothing in the language of this homines replegiando which would indicate that the Court believed that Phillis, Peggy and George to be indentured servants either. But nearly a month after Phillis' lawyer, Edward Hempstead, issued the writ as Phillis' next friend, William Henry Harrison issued a proclamation "having received information that some evil disposed persons are about to transport from the Territory, certain indented

[3] See Philbrick, The Laws of Indiana Territory, 40.

servants of Color... ." and that these 'evil disposed persons' were about to transport Phillis, Peggy and George out of the Territory "without their Concent [sic] first had and obtained, with a design as is supposed of selling them for slaves contrary to the law and dignity of the United States."[4]

The Governor, issued this proclamation "forbidding and strictly enjoining the persons aforesaid from carrying into Execution their nefarious and inhuman designs as they shall answer the same at their peril." At the same time he issued this strongly worded proclamation without mentioning the names of the persons who were about to carry Phillis and the two children out of the territory, Harrison required and commanded "all magistrates and other civil officers to exert themselves in their several capacities in giving proper and necessary relief to all persons illegally confined for the purpose above mentioned."[5]

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[4] April 6, 1804. Transcription of the Journal of Government of the Indiana Territory July 4, 1800-March 3, 1808, 14; Petitions and Other Papers Related to Gov. Wm. H. Harrison Indiana Territory 1800-1812, Box 4 Pt. 1 Archives Division Commission on Public Records, Indiana State Library; William Wesley Woolen, Daniel Waite, Howe, and Jacob Piatt Dunn, eds., "Executive Journal of Indiana Territory 1800-1816," Indiana Historical Society Publications vol 3 (Indianapolis, 1900),114. Certainly Harrison was alluding in part to Phillis, Peggy and George. One of the "certain evil disposed persons" was Simon Vanorsdel. It is not explained who any others were, however, one may have been Johnathan Purcell.

[5] Ibid.

Whereas the March 8, 1804 writ referred to Phillis, Peggy and George as 'persons of Colour of Vincennes,' Harrison, in the proclamation referred to them as 'certain indented servants.' While Harrison asserted their humanity, he simultaneously assumed that if they were not slaves, they were at least 'indented servants.' Indentured servants were not slaves but they were not of the status of freemen. This despite the fact that it appears that Phillis, Peggy and George were not indentured.

Whether Harrison assumed that Phillis, Peggy and George had been indentured or knew their true status is impossible to tell. There is no evidence that they were indentured prior to March 8, 1804, or even at the time Harrison issued the proclamation. Nor is there any evidence that explains why it took Harrison a month after the homines replegiando was issued for his declaration. The Governor very likely knew on March 8, 1804 that Vanorsdel had kidnapped Phillis, Peggy and George. In subsequent events during the case the officials knew immediately what had taken place.

It was a busy time for the Executive and the Judges, however. Prior to the transition to a second grade government, Harrison made territorial appointments, controlled land claims, worked as an emissary securing treaties with the various indigenous nations of Indians

and was Commander and Chief of the militia. By 1803, the anti-Harrison divisionists from the Illinois clamoured for separation, suffrage and joinder to the Louisiana District.

In 1804, within two weeks and a half weeks after the writ of homines replegiando was issued, Congress endowed Harrison and the Judges with even more power. By the Act of March 26, 1804, Congress created the District of Louisiana and joined it to Indiana Territory for administrative purposes. Harrison and the Judges held the same legislative, executive and judicial powers over the District as they did in Indiana.

Although heavily weighed by his executive duties and responsibilities, once Harrison issued the proclamation, he took immediate action. The day after Harrison issued the proclamation, he and John Rice Jones, then attorney general of the Territory, became bail for George, but not for Phillis and Peggy. Seemingly, some relationship between Harrison and George existed before Vanorsdel kidnapped him. Harrison and Jones paid a three-hundred dollar bond.

The condition of the recognizance bond was that if Harrison produced George at the September General Court session, then he and the attorney general would be released from the obligations of the bond. The document read:

> Whereas a certain mulatto man named George has been brought before Henry Vander Burgh, Esquire, one of the Judges of the said territory, by virtue of my warrant for that purpose as a person who was about to be transported from the territory without his consent with the design as is supposed of selling him for a slave in a foreign country...I have this Day with the consent of the said Mulatto delivered him into the hands of the said William Henry Harrison, to be by him kept untill [sic] the next General Court of the territory....[6]

Although the March 8, 1804 writ instructed Vanorsdel to produce Phillis, Peggy and George, at the next General Court, there is no evidence that he responded to the homines replegiando or that the Court heard the case during its April term 1804. There may be an explanation for why there was no trial on the homines replegiando. One historian noted, "The non-use of replevin is, indeed, understandable since the Territory took its practice from states where that action had not

[6] "Recognizance Bond," April 7, 1804, United States v. Simon Vanorsdall [sic], Judicial Box 2 Folder 14 William English Collection The Joseph Regenstein Library The University of Chicago. All further references to this collection in this chapter are in Box 2 Folder 14. Harrison put up his property and chattle lands to cover the bond. The same day that Harrison appeared in behalf of George, James Hall and John D. Hay, two of Vanorsdel's associates, became bail for Thomas Levins, a local resident of Knox County, who reportedly falsely imprisoned and committed an "assault and Battery" on Ned, a black man from Vincennes. It is not known whether there is a connection between Phillis and Ned, however, this writ was located in Vanorsdel's case. See "Recognizance Bond, [for Thomas Levins]" dated April 7, 1804, United States v. Simon Vanorsdell English Collection The University of Chicago.

been liberalized."[7] However, there is no explanation of why Harrison did not become bail for Phillis and Peggy. Neither is how or when Harrison gained physical custody of George from Vanorsdel explained. Whether Vanorsdel appeared at the bail hearing is not recorded, but he did appear in Court during the April Term on another case.[8]

It was not until the late summer of 1804 that the Court turned its attention to the case of Phillis, Peggy and George. During the same time, Harrison appointed Benjamin Parke, attorney general of the Territory. Anti-Harrison residents of the Territory accused the Governor of nepotism in appointments. Whereas John Rice Jones, the previous attorney generld held slaves and supported slaveholding interests, it was Parke who was Harrison's right hand and strongest advocate. Parke was appointed attorney general on August 4, 1804.[9]

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[7] Francis S. Philbrick, "Law, Courts and Litigation of Indiana Territory (1800-1809)," Illinois Law Review 28:200.

[8] Indiana Territory General Court."Ho[mines] Reple[diando]," March 8, 1804 in Phillis, et al v. Simon Vanorsdall Box 5 # 386 Archives Division Commission on Public Records Indiana State Library; Indiana Territory General Court, Simon Vannorsdall v. Andrew Scott Box 6 # 421 Arhives Division Commission on Public Records Indiana State Library.

[9] For Parke's appointment on August 4, 1804 see Journal of the Proceedings of the Executive Government, 6. For a discussion of Parke's support of Harrison see Dorothy Goebel, Harrison, 78-83.

Three weeks later, John Griffin, another of the Judges of the General Court, issued a writ of habeas corpus.[10] The writ, dated August 27, 1804, instructed Vanorsdel to produce George, Phillis, and Peggy before the Court on the fourth day of September. The same day, Vanorsdel responded to the habeas corpus, acknowledging, "In obedience to the command of the within writ, I have here the Bodies of George, Phillis and Peggy as within required."[11]

It is not clear from the information in the writ whether George, Phillis and Peggy appeared before the Court when Vanorsdel answered the order. Neither is it known how or whether Vanorsdel acquired George from Harrison. But for the first time since the case was initiated, Vanorsdel claimed that he was acting as agent

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[10] John Griffin...to Simon Vannorsdall, Writ of Habeas Corpus August 27, 1804 in US v. Simon Vanorsdall English Collection The University of Chicago. The writ read: "Indiana Territory. John Griffin one of the Judges in an over the said Territory to Simon Vanorsdale greeting You are hereby commanded to have the Bodies of George, Phillis and Peggy by you detained together with the day and cause of their detention and caption at the sitting of the General Court on the 4th day of September next, that seeing the cause that further may be done in therein, that of right & according to law ought to be done, & further to do and receive, what shall then and there be considered of by the Court, in that behalf, & have them and there this writ--Given under my hand & Seal at Vincennes in the said Territory the 27th day of August in the year of our Lord 1804 and of the independence of the United States the 29th. John Griffin.

[11] "Return on Writ of Habeas Corpus," in United States v. Vanorsdall English Collection The University of Chicago.

for the heirs of John Kuykendall, Jr. and Elizabeth his wife of Hampshire County, Virginia.

Jeremiah Claypoole would maintain later that he brought "several negroes" [Phillis, George and Peggy] to Knox County, and that he had been in possession of a deed which entitled him to them.[12] Vanorsdel must have known Claypoole since they both resided in Palmyra Township and Claypoole was living there when Vanorsdel purchased property in the township. Vanorsdel also must have been familiar with Claypoole's relationship to the blacks.

Vanorsdel also claimed that Phillis and her family escaped from Virginia without the knowledge and consent of the heirs. Yet, the same day that the Court issued the writ of homines replegiando, Hurst also issued a summons for Peter Kuykendall, one heir of the Kuykendalls, who was in Vincennes. Peter Kuykendall and Vanorsdel might have been well acquainted with each other because the Kuykendall son was summoned to appear before the Court in the case of Vanorsdall v. Andrew Scott.[13] Why

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[12] "Deposition of [Jeremiah Claypoole]," June 15, 1805 in United States v. Simon Vanorsdall English Collection The University of Chicago.

[13] Indiana Territory General Court. Henry Vander Burgh to William Prince "Summons [for Peter Kuykendall and John Pancake In Re Vanorsdall v. Scott.]" Box 5 #387 Archives Division Commission on Public Records. See also Indiana Territory, Order Book of the General Court of Indiana Territory 1801-1810 (2 vols), I, 131 (hereinafter cited Order Book). Jacob Kuykendall, the Knox County coroner and a first cousin of John Kuykendall, Jr., undertook the case for Scott, against Vanorsdel, vowing

Vanorsdell acted as agent rather than Peter Kuykendall or why Peter simply did not claim the blacks is not indicated.

Vanorsdel may have believed that his contention that Phillis, Peggy and George were fugitives would be accepted unquestionably. As further evidence of the supremacy of a "citizen's" word over that of a black is that the fugitive slave clauses in the Ordinance and the Constitution and the Fugitive Slave Act of 1793 did not require any written proof of ownership or any documentation from the attorney or agent who claimed the black as a slave. But since at least one heir was in Vincennes at the time of the allegation, it seems as if it would have been easy for Vanorsdel to furnish such information.

But there is no record that Vanorsdel furnished documentation to the Court that any of the heirs appointed him to act as their agent. Moreover, there is no record that Peter offered any testimony during the entire course of the trials to support Vanorsdel's claim or that he offered testimony in behalf of the alledged fugitives. One of the descendants of the Kuykendall family contended that all of the sons of Elizabeth and

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that if the Court found for Vanorsdel, he would pay the cost for Scott.

John, Jr. were in Vincennes by no later than 1805.[14] The Kuykendall family of Knox County was well known to the Court and to those in power. Jacob Kuykendall, a first cousin to John Jr., had been appointed coroner of Vincennes in 1802 and was a member of the Board of Trustees of Vincennes University.[15]

Abraham Kuykendall, another first cousin to John Jr., served as a Justice of the Peace of Knox County in 1801. Luke Decker, another first cousin to John Jr. and who settled in the Northwest Territory in 1784, served as one of the Justices of Common Pleas Court in the Northwest and in Indiana Territory.[16]

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[14] George Benson Kuykendall, History of the Kuykendall Family, 51.

[15] (Vincennes) Western Sun and General Advertiser, (September 7, 1833); Ibid., (September 14, 1833); Indiana Territory, Journals of the General Assembly of Indiana Territory, Gayle Thornbrough and Dorothy Riker, eds., Indiana Historical Society Collections vol. 32 (Indianapolis, 1950), 72; Henry S. Cauthorn, A Brief Sketch of the Past, Present and Prospects of Vincennes (Vincennes, 1884), 30; Joseph Vanderburgh Somes, Old Vincennes: The History of A Famous Old Town and its Glorious Past (New York, 1962), 170. Somes maintains that Kuykendall is pronouced Kir-ken-dall. He also claims that most settlers in Palmyra Tonwhip came from slave states.

[16] "Knox County Wolf Scalp Bounty," in Auditor's Receipts 1801-1844, Byron Lewis Library Vincennes University. This document read: "Nicolas Jonson [sic] appeared before Abraham Kuykendall, Justice [of the] Peace Knox Co. with one wolf head above six months old... ." See also Leonard Lux, "The Vincennes Donation Lands," Indiana Historical Society Publications (Indianapolis, 1949), 15:477 note 20. "Donation claims of Abraham Kuykendall, in the right of Joseph DuBois...entered November 27, 1806. See Governor St. Clair to Luke Decker, The St. Clair Papers, ed. William Henry Smith, 318.

Vanorsdel was likely acquainted with some of the Kuykendall heirs before he or they came to Knox County. In 1800, Peter and others of the Kuykendall family and the Vanorsdel family resided in Kentucky. Vanorsdel grew up in Jefferson County. Moses Kuykendall, an uncle of John Kuykendall, Jr. also resided in Jefferson County and owned Kuykendall's Station, a mill on Beargrass Creek. Prior to coming to Vincennes, Peter and his brothers, Daniel, John and Henry lived in counties which were made from Jefferson.[17]

Since Vanorsdel claimed that he acted as agent for the heirs, some relationship between he and them likely existed. But though he acted as agent, Vanorsdel violated the federal provision for reclaiming fugitives "from labor." The Fugitive Slave Act of 1793 very explicitly detailed the procedure which "the person to whom such labor was due, his agent or attorney" must follow to claim fugitives from labor.[18] Only the person

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[17] Peter Kuykendall lived in Shelby County, a county made from Jefferson, and he appeared on the Tax List for that county on August 25, 1800. In 1800, Moses Kuykendall and Simon Vanorsdel appear on the Tax List for Jefferson County. Abner, Adam, and John, probably the son of John, Jr. all lived in Henderson County which was made from Shelby County. Abner, Adam, John, Peter and Henry, another son of John, Jr. are all on the Knox County census in 1807. See G. Glen Clift, "Second Census" of Kentucky 1800 (Baltimore, 1976), 165, 303; Census of Indiana Territory 1807 (Indianapolis, 1980), 1, 4, 6, 8.

[18] "An act respecting fugitives from justice and from labor and the service of their masters," U.S. Statues at Large, I, 302; Marion Gleeson McDougall, Fugitive Slaves

to whom labor was due, his agent or attorney "might seize the fugitive." Then he must "carry [the fugitive] before any United States Judge or before any magistrate of the city, town or county in which the arrest was made."[19] The judge or magistrate "on proof to his satisfaction, either by oral or by affidavit..., that the person seized was really a fugitive and did owe labor as alleged, was to grant a certificate to serve as sufficient warrant for the removal of the fugitive to the state from which he fled."[20]

Although Vanorsdel failed to take Phillis, Peggy and George before a United States judge or magistrate, the General Court, the supreme law in the Territory, failed to hold him culpable or to make him pay recompense for this violation of the federal edict. Vanorsdel, had, in effect, kidnapped the three. He stressed that he acted according to the laws of Virginia and "in pursuance and conformally to 'an act respecting fugitives from justice and persons escaping from their [sic] service of there [sic] masters.'" Moreover, he held that he still

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1619-1865 (1891 reprint New York, 1967), 18-19; C. W. A. David, "The Fugitive Slave Act of 1793 and Its Antecedents," The Journal of Negro History (JNH) 9 (January, 1924), 18-24. For details of the debates over this issue see: U. S. Congress, Senate Journal 2nd Congress 2nd Session, 460; Annals of Congress, 616; American State Papers: Miscellaneous, I, 39-43.

[19] Ibid.

[20] Ibid.

detain[ed] them as slaves with the design of removing them to...Virginia from which they fled."[21]

Although at least one of the Kuykendall heirs was in Vincennes when this case began and others were in Kentucky, Vanorsdel did not explain why he still intended to take Phillis, Peggy and George to Virginia. An incentive for him may have been that, pursuant to an act passed in 1792 in Virginia, a reward was provided for those who captured fugitives slaves. This act, referred to as a very pernicious one, encouraged the seizure of even free-blacks.[22]

When Vanorsdel returned the writ of habeas corpus, he claimed that Daniel Brown, Elizabeth Kuykendall Stockwell's father, deeded her and her husband, John Kuykendall, Jr. "Phillis, a negro woman and her two children Bob and Kate," on June 15, 1776.[23] This point is true.

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[21] Ibid.

[22] A. Leon Higganbotham, Jr., In the Matter of Color Race and The American Legal Process: The Colonial Period (Oxford, 1980), 58. Higganbotham claims that the act of 1793 regarding blacks was the most repressive to that date. See also: Samuel Shepard, The Statues at Large in Virginia 1792-1806 (3 vols Richmond, 1835), I, 178-179 quoted in Robert McColley, Slavery and Jeffersonian Virginia (2nd ed. Urbana, 1973), 93.

[23] Return on Writ of Habeas Corpus," August 27, 1804; "[Copy of the Deed of Gift, Daniel Brown to..." Deed Book 5 Hampshire County Deeds, 15 from Personal Papers of Helen Sole, a descendant of Jeremiah Claypoole and the Kuykendalls and genealogist, Vincennes, Indiana. This deed reads Indenture of Gift Daniel Brown of West Augusta for and in consideration of the natural love and

The deed, however, was a Deed of Gift. A Deed of Gift is a deed executed without payment or consideration. That is, it is an agreement which is not a legally enforceable contract.[24] Yet Vanorsdel insisted that Brown deeded the woman and her two children "together with all their future increase, for and during John and Elizabeth's natural lives and after they died, Phillis and her family were to be equally divided among the children." Perhaps because he believed that the Court would never ask to see the Deed of Gift, Vanorsdel certified that Daniel Brown declared "that it was his desire that no one might interpret that Deed of Gift in

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affection which I have and do bear to my Daughter Elizabeth Kuykendall, the now wife of John Kuykendall, Jr. of Hampshire County give to John Kuykendall and Elizabeth his wife one negro woman named Phillis and her two children Kate & Bob June 15, 1776." Signed Daniel Brown Wit[nessed]: Sam Dew, Math. Kuykendall. rec[orded] March 10, 1779. See also Clara McCormack Sage and Laura Sage Johns, "Grantor-Grantee Deeds," 5. The language of the Deed of Gift listed in this volume is comparable to the one found in Deed Book 5, but it is listed as a Deed of Gift rather than an Indenture of Gift.

[24] Ibid. Compare "Deed of Gift," Marvel Nash to Agnes Nash Lincoln Co., Ky., August 23, 1799 in Slavery Kentucky 1789-1840, Indiana Division Indiana State Library. When Nash deeded his daughter Agnes a Negro girl named Liddy it was "unto the said Agnes Nash, her heirs and assigns forever." See also "Deed of Gift," Marvel Nash to daughter Susannah, in Ibid. for a comparable deed. The language is the same. The wording however, is different is the Deed of Gift Daniel Brown made to his daughter and her husband. Brown did not specify that he gave Phillis, Bob and Kate to the Kuykendalls and their heirs and assigns.

such a manner as to deprive the children of the negroes."[25]

It is unlikely that Vanorsdel could have known what Brown's desire was. The young man was born on July 5, 1778 in Pennsylvania, two years after Brown deeded Phillis, Kate and Bob to his daughter and son-in-law. The so-called agent further claimed it was Brown's intention that after John and Elizabeth's deaths, the negroes "should become the absolute property of such children," and that Brown did not want the children "to be deprived of their property because the deed was not in the correct form."[26] Here Vanorsdel acknowledged a possible flaw in his claim or the children's.

The writ of habeas corpus, signed by Griffin on August 27, 1804, directed Vanorsdel to appear with Phillis, Peggy and George "on the 4th day of September," yet, it was not until Wednesday, September 5, 1804 that Vanorsdel appeared before the General Court. But on Wednesday, no one showed up to prosecute him.

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[25] "Return on the Writ of Habeas Corpus," August 24, 1804, United States v. Vanorsdall English Collection Chicago.

[26] Ibid.; For a description of the Vanorsdel lineage see "Origin of some Conewago (Penn.) Families that later migrated to Mercer Co., Ky.," in Samuel Scott Brewer Papers in Genealogy Division Indiana State Library. This Simon Vanorsdel was the second son of John Van Arsdale and Neeltie Peterson.

Parke should have appeared in Court to prosecute Vanorsdel but, conveniently, failed to appear in Court. Hence, "no person appearing to prosecute [Vanorsdel] he [was] discharged."[27] The whereabouts of Parke on September 5th are not known. But on September 4, 1804, Henry Vander Burgh ordered Edward Hempstead, who acted as attorney for the blacks, to report to the Court's chambers, to be examined on September sixth. John Rice Jones, whom Parke succeeded, and Parke were scheduled to examine Hempstead and on the sixth he produced his licensed and took his oath.[28]

Whether the prosecuting attorney had made preparations for the case is not recorded. But both Jones and Parke were available on September fourth, when the case was originally ordered to be heard, and on the sixth. The failure of both these men to appear in Court on the fifth might have signaled an unwillingness of Harrison and his friends to proceed.

The term discharge apparently in this context meant to discharge Vanorsdel from the obligations of the writ of habeas corpus. Vanorsdel produced Phillis, Peggy and George before the Court as the writ ordered. Yet the Court rendered no decision on the status of Phillis, Peggy and George. Although it may have been meant that

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[27] Order Book, I, 109.

[28] Ibid., 101, 105.

no further action on the case was to be taken, Phillis remained adamant.

Eight days after the Court discharged Vanorsdel, Chief Justice Thomas T. Davis summoned Jeremiah Claypoole to produce a deed for the blacks. This action was precipitated by a subpoena duces tecum. Despite the fact that blacks could not bring legal action, Phillis' name appeared at the bottom of the supoena, and, presumably, she initiated the action. The issuance of this writ, coupled with the fact that the Court failed to define the status of Phillis and the two children directly, may indicate an unwillingness of the Court to upset the status quo at this time and to address the ambiguity of freedom and slavery in the Territory. The General Court instructed Claypoole to appear before it and "to produce a certain deed an instrument executed by Daniel Kuykendall, William Stockwell and Elizabeth Stockwell wife of the said William late Elizabeth Kuykendall of Hampshire County... ."[29]

In his deposition, Claypoole claimed that Elizabeth, her son and her second husband, William, deeded him,

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[29] "Subpoena Duces Tecum, September 13, 1804 Executed by William Prince. Phillis.," in United States v. Simon Vanorsdall English Collection The University of Chicago. The subpoena duces tecum is "the name of species of writs ...requiring a party who is summoned to appear in court to bring with him some document, piece of evidence, or other thing to be used or inspected by the court." See Black's Law Dictionary.

"Three certain black persons or negroes by the names of Phillis, George and Peggy... ."[30] If accurate, this would date the sale of Phillis, Peggy and George prior to 1794, the year Elizabeth Kuykendall Stockwell died.

On Monday, Septmber 17, 1804, when the case came before the General Court, Phillis' lawyer, Edward Hempstead motioned that Vanorsdel produce the deed he referred to in the return on the habeas corpus. The Court supported Hempstead's motion. Despite claims by both Claypoole and Vanorsdel, neither could produce a deed for Phillis, Peggy and George. [31]

John Kuykendall, Jr. died intestate in 1785. According to a Virginia law code passed in 1779, "An act directing the course of descent," widows of those dying intestate were entitled to hold as their "absolute property one-third part of the slaves whereof her husband died possessed."[32]

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[30] "Deposition [of Jeremiah Claypoole]," September 13, 1804 in United States v. Simon Vanorsdall English Collection Chicago.

[31] Ibid. In this deposition, Claypoole claimed that Elizabeth Kuykendall Stockwell died in 1794.

[32] William Waller Hening, The Statues at Large: Being A collection of All the Laws of Virginia, from the First Session of the Legislature, in the Year 1619 (13 vols. Richmond, 1823), 12, 138; These provisions are listed in sections 21, 25, and 26. Compare: "An act to amend the act intituled [sic] "An act directing the course of Descent, passed December 24, 1790," in Ibid., 13, 123-125.

After the wife's death, any slaves she held would go to the children. The law authorized the General Court of Virginia to determine the administrator of the estates of persons dying intestate and gave preference to the surviving spouse. Since the Kuykendall children were all minors, when John, Jr. died, Elizabeth would have been appointed administratrix of her husband's estate and therefore would have controlled the blacks.[33]

Since the oldest son was born in 1775, he would not have been twenty-one years of age even at her death in 1794. Elizabeth was legally entitled to one-third of the slaves living when her husband died. The 1790 amendment to the "act directing the course of descent provided:

> Whereas one or more slaves shall descend from a person dying intestate, and an equal division thereof cannot be made in kind, on account of the nature of the property, it shall be lawful for the high court of chancery or the court of the county or corporation, by which the administration to the estate of the intestate was granted, to direct the sale of such slaves, and the distribution of money arising therefrom, according to the rights of each claimant. Provided always, That each claimant

[33] Ibid., 12, 183. Wives were named administratrixes of their husbands' estates. See: "Receipt," February 12, 1779 in "Statements, Accounts, Re: Catherine Kuykendall, Admx. Abraham Kuykendall" Env. 12 Hampshire County Court House 1783, in Hampshire County Court, Statements, Accounts and Records, West Virginia University, Morgantown, West Virginia. The receipt read: "This Day received of Catherine Kuykendall Executor of Abraham Kuykendall nineteen pounds Eight shillings... ."

> shall be first duly summoned to show cause, if say he can, against such sale.[34]

However, since Elizabeth Kuykendall later married William Stockwell, her new husband would have also had some rights to any slaves she possessed.[35]

On Friday, September 21, 1804, likely in response to Claypoole's claim, the Court released Peggy and George from Vanorsdel's custody. Not mentioning the mother and the children by name, but as "the persons mentioned in the writ," the Court determined that the deed referred to in Vanorsdel's return was insufficient evidence. Moreover, the Court decided that what was presented in the return in reference to Daniel Brown's deed to his daughter had been copied from the deed in Hampshire County.[36]

The Court declared further that the return was "non evidence" and that Phillis, Peggy and George were not fugitives from slavery.[37] But the decision, as recorded by the Clerk was only that Phillis, Peggy and George were not fugitives from slavery. There were several precedents

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[34] Hening, Laws of Virginia, 13, 123.

[35] Ibid., 12, 138.

[36] Order Book, I, 150. It is not known who acquired a copy of the deed in Hampshire County. Johnathan Purcell had the opportunity since he was involved in litigation there on February 17, 1804.

[37] Ibid.

that the Court could have used to declare the mother and two children free.

Vander Burgh, who signed the Court record on September 21, 1804, was well aware of the precedent established in 1794 by Judge Turner, a Judge of the General Court of the Northwest, when he declared two of Vander Burgh's slaves free by virtue of the Northwest Ordinance. Chief Justice of the General Court of the Northwest Territory, John Cleves Symmes, who became Harrison's father-in-law, concurred with Turner's decision and also proclaimed that the blacks were "free by the Constitution of the Territory."[38] Moreover, it was understood by various residents of Indiana Territory, that the Court had the power to free slaves. In their petition for slavery in 1796, the petitioners complained that because "a diversity may happen in the opinions of different judges," they appealed to Congress to allow slavery.[39]

Vander Burgh and the other Judges also could have drawn on another precedent established in the Northwest Territory by John Cleves Symmes. When Symmes was on circuit in Illinois in 1798, he declared a black, who had been brought there after the adoption of the Ordinance of

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[38] Arthur St. Clair, The Papers of Arthur St. Clair, ed. William Henry Smith, II, 325.

[39] American State Papers: Public Lands, I:61.

1787, free.[40] As Jacob Dunn pointed out Phillis and her family were brought into the Territory without being indentured.[41] Moreover, they were apparently brought before any indenture law was passed but not registered in November 1803 when the law went into effect. The Judges could have drawn on a precedent established in 1799 in Pennsylvania. In the case of Giles vs. Meeks, a Pennsylvania Court decided that neglecting to register slaves at the time required by statute, entiltled them to their freedom.[42]

If Phillis, Peggy and George were not fugitive slaves, and were not indentured servants, and no one could produce a deed proving that the three blacks were slaves, what was their status? As Isaac Darnielle pointed out, 'either they were slaves or they were free.' But the General Court of the Territory remained silent on this point. Its failure and unwillingness to address this questions supports the assertion that the 'police regulation,' in Territory favored tradition over law and were relunctant to change the status quo. Moreoever, the judges of the General Court were unwilling to challenge fully the ambiguities within the Ordinance and the

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[40] Francis S. Philbrick, "Law, Courts and Litigation of Indiana Territory (1800-1809), Illinois Law Review 26:14.

[41] Jacob Dunn, Indiana A Redemption from Slavery, (Boston, 1888), 238.

[42] Giles v. Meeks, (1799), Addison, (Pa.), 384.

Constitution or address the conflict between the two definitions of government.

I had to keep on! No stopping for me--
I was the seed of the coming Free.
I nourished the dream that nothing could smother
Deep in my breast--the Negro mother.
Langston Hughes

## Chapter Two

### Phillis, Peggy and George: Vanorsdel's Second Assault

Vanorsdel completely disregarded the Court's decision. Between the time the Court rendered its decision on September 21, 1804 and September 22, he, with the help of John Huling, a constable of Vincennes township, captured Phillis, Peggy and George and took them before Peter Jones, a slaveseller, a slaveholder and a judge of the Common Pleas Court. Jones was also a justice of the peace.

Like Vanorsdel, Jones participated in extralegal and illegal schemes in the Territory and he was not above assault and battery. Though Vanorsdel apparently offered no more 'proof' to Jones than he did to the General Court, the Justice, notwithstanding the ruling of the Supreme Court of the Territory, issued a certificate authorizing Vanorsdel to carry Phillis, Peggy and George to Virginia.[1]

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[1] Clearly Jones was a slave seller. He sold slaves outside his tavern in Vincennes. See: Western Sun (January 20, 1808); Ibid (January 27, 1808); Ibid (February 9, 1808); Ibid (February 23, 1808). Peter Jones advertised the sale of a Negro woman "for terms only" in these issues. Western Sun (February 8, 1817) When Henry Vander Burgh died a notice appeared in the local newspaper. "Will on Friday the 28th of Feb. 1817 at

The law of 1801, "An Act to Regulate the Practice of the General Court...," clearly proscribed the method of appeal. The law provided that "Every appeal shall be prayed at the time of rendering the judgment, sentence or decree."[2] It also specified the procedure the appellant must follow in the appeal. Both Jones and Vanorsdel knew the process for appeal. When Vanorsdel disagreed with an unfavorable decision the General Court rendered in his case against Andrew Scott, he immediately exercised his right to appeal, and requested a new trial.[3]

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the door of Peter Jones in Vincennes, sell to the highest bidder, a NEGRO WOMAN and CHILD belonging to the said estate. She was brought into the Territory of Indiana and registered in the Clerk's office under the act of the Territorial Legislature... ." When Jones died, Sally Jones, Administratrix of his estate notified the townspeople that the personal estate included "the hire of three or four servant men and two servant women." Western Sun (February 21, 1818. Jones was adamant about his property. In December 1812, he demanded that Elihu Stout, the local printer, return Phebe, one of Jones' servants. See: Peter Jones to Elihu Stout, December 21, 1812 Henry Cauthorn-Elihu Stout Collection Indiana Historical Society. See also Register of Negroes and Mulattoes 1805-1807. This volume is located in the office of O.K. Anderson, Knox County Clerk at the Knox County Court House. Stout had indentured Phebe for sixty years; "The Deposition of Paul Teslan" in Teslan v. Martin 23rd March 1805 in Court Record John Gibson's Ledger No. 2 Vincennes 1801-1820 Archives Division Commission on Public Records Indiana State Library. Jones wrote, "...Teslan personally appeared before me Peter Jones one of the Justices of the Court of the Common Pleas for Knox County, [n.p.] Peter Jones was from Virginia and possibly from Hampshire County. There was a Peter Jones listed on the 1792 WPA Census. See First Census of Hampshire County, 28.

[2] Philbrick, The Laws of Indiana, 4.

[3] Vanorsdall v. Scott in Order Book, 203.

But rather than using the appeal process in the fugitive slave case, Vanorsdel chose to get a second ruling. He clearly flaunted the established legal procedures when he took Phillis, Peggy and George before Jones and Jones was either in collusion or in error when he issued the certificate authorizing Vanorsdel to take the three blacks out of the Territory. Jones, in effect, usurped the superior Court's appellant and original jurisdiction. Jones' action indicate that he cared little whether Phillis, Peggy and George had been freed by the sixth article of the Northwest Ordinance, rather he was more interested in assuring the rights of the citizens to their alleged property.

Jones held powerful positions in the Territory. Not only was he a Justice of the Peace and Judge of the Common Pleas Court, but he was a tavern keeper. As one historian noted of the official hierarchy in the Territory, "The Common Pleas justices really controlled the sheriffs... . The justices in turn were controlled largely by the tavern keepers who they created. The influential politicians were the sheriffs, justices and tavern keepers."[4] Hence neither Jones nor Vanorsdel cared whether they deviated from the established legal procedures or disregarded a General Court decision.

[4] Esarey, History of Indiana, I, 76.

At least one of the Territorial Court Judges was extremely cognizant of the ramifications of disregarding a Court decision. In 1794, after Henry Vander Burgh disobeyed a Court decision rendered by George Turner, a judge of the General Court of the Northwest, Turner, was determined to begin impeachment proceedings against him. Turner had freed two blacks, Peter McNelly and his wife Queen, whom Vander Burgh, then a probate judge, claimed as slaves. Queen mysteriously disappeared and Turner allowed Peter to sue Vander Burgh for three thousand dollars damages.[5]

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[5] Turner wrote St. Clair: "I have not been long here before I discovered that some abuses had taken place through the artifices of certain individuals, one of whom is Henry Vanderburgh... . As it is my determination to impeach Vanderburgh before the Territorial Legislature,...lest the party accused should try to elude the punishment that may await him in the case of conviction, by offering your Excellency his commission as judge of probate. I pledge myself to produce satisfactory proofs of his guilt.
.....
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In addition to what I have already observed, it may not be improper to mention that certain persons here have lately been guilty of a violent outrage against the laws. They were employed by Vanderburgh to seize and forcibly carry away two negroes, a man and his wife, who are free by the Constitution of the Territory, and who, being held by him as slaves, has [sic] applied to me for the writ of habeas corpus." See The St. Clair Papers, ed. William Henry Smith, 325. See also "Papers Delivered to Judge Symmes," August 26, 1795 in William H. English Collection Miscellaneous Indiana Historical Society. A list provided in this collection catalogs: "Hab. Cor: Henry Vanderburgh [P. Nelly & wife], Writ of false imprisonment, $3,000 damages United States v. Henry Vanderburgh Committed to jail by Judge T[urner] but permitted by the Sheriff afterw[ar]ds, though contrary to

Nonetheless, there is no evidence that the Court admonished either Vanorsdel or Jones. However, the Court gave Phillis, Peggy and George the benefit of another writ of habeas corpus. It is not known how the Court found out so quickly what Vanorsdel, Huling and Jones had done. On the same day that Vanorsdel seized the mother and her two children, Chief Justice Thomas T. Davis issued a new writ of habeas corpus demanding that Vanorsdel and Huling produce Phillis, Peggy and George on September 25, 1804.[6]

With the institution of the new case, the Court would have to make an unequivocable decision. A law passed in 1803 provided that "not more than two trials shall be granted to the same party in the same cause."[7] On September 25, 1804, when the new trial began, Vanorsdel and Huling claimed that "in conformity to an act of Congress...respecting fugitives from Justice and persons escaping from the service of the masters, Peter Jones, one of the Justice[s] of the County of

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law, to go at large for disobedience to writ of Hab. Cor."

[6] Indiana Territory, "Habeas Corpus Thomas Davis Chief Justice to John Huling and Simon Vanorsdall," September 22, 1804 in William English Collection The University of Chicago. The indenture laws were aimed at "negroes and mulattoes...not being citizens of the United States." See: Philbrick, Laws of Indiana Territory, 39.

[7] Philbrick, Law of Indiana Territory, 39.

Knox...issued a warrant under his hand and seal as such Justice bearing the date [September] twenty second."[8]

From the wording of the return on the habeas corpus, Vanorsdel was primarily interested in Peggy and George and not Phillis. Perhap Phillis' age had a bearing on this. It must be remembered that she and her two older children were deeded to the Kuykendalls in 1776, nearly thirty years before the date of the fugitive slave trial. Phillis must have been nearly fifty.

But for whatever reason, Vanorsdel intentionally avoided mentioning Phillis' name, referring to her as "another negro therein named."[9] He claimed that he obeyed Jones' warrant [rather than the General Court decision]. He maintained further that Jones authorized him to arrest Peggy, George, and "another negro" and that "upon the Directions of the said Act of Congress upon proof being made to him according to laws [sic]," [Jones] gave a certificate authorizing Vanorsdel, as agent for the heirs, to remove the "fugitives to the state of Virginia."[10] But since the heirs were in Vincennes, it

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[8] Indiana Territory, "Return on Habeas Corpus, Decided April Term 1805," William English Collection The University of Chicago. It is not known why this document is dated April Term 1805. The case was not finally decided until April Term 1806.

[9] Ibid.

[10] Ibid.

is certainly not known who Vanorsdel would have taken Phillis, Peggy and George to in Virginia.

When he disregarded the General Court decision, perhaps Jones believed nothing would be done. If so, he was correct in his assumption. Instead of punishment for usurping the General Court's authority, Jones received a reward of sorts. On April 28, 1805, many of the prominent citizens of Vincennes signed a petition presented to Harrison, recommending that he appoint Jones auditor. The persons who signed the petition fell into four catagories: members of the judiciary and bar, other officials of the Territorial administration, pro-Harrisonian slaveholders and relatives and friends of John Kuykendall, Jr.[11] Jones received his reward on September 5, 1805, when Harrison appointed him auditor of the Territory.[12]

Whereas Jones had acted in an official, albeit illegal, capacity, the Governor acted in a strictly personal one when he, again, intervened in the case. After the return on the habeas corpus was filed, the Governor acknowledged "himself indebted to the United

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[11] Indiana Territory, "Presented to Governor Harrison on the 28th day of April 1805 by Peter Jones," in Election Returns, Papers Related to the Administration of Governor William Henry Harrison, Archives Division Commission on Public Records Indiana State Library. The names of the subscribers are listed on the document.

[12] Journal of Proceedings of the Executive Government, 10.

States in trust for the heirs of John Kuykendall and Elizabeth... ."[13] Two of Harrison's friends, General Washington Johnston and John Johnson, both members of the proslavery faction, contributed to the bail payment with Harrison. The Governor and his friends put up their personal chattle lands as security for the bond and paid a total of twelve-hundred dollars.

The Court then released, Peggy and George, "two persons of Coulor [sic]," into Harrison's custody and postponed the case until the next term. They also instructed Harrison to produce Peggy and George in Court on the first Tuesday in April 1805. In addition, they ordered Vanorsdel to "keep the peace towards George and Peggy."[14] Again, Phillis was not mentioned.

There are several points worthy of note. First, Peggy and George were referred to again as 'two people of color,' neither as slaves nor as indentured servants. Why the document writer chose not to refer to the sister and brother as slaves or indentured servants may indicate that their status was unclear. Second, Harrison again interceded in their behalf and acted for John and Elizabeth Kuykendall though there is no indication that he knew the Kuykendalls and even though at least two of their heirs, Peter and Henry Kuykendall, were in

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[13] Indiana Territory, Order Book, 153.

[14] Ibid., 153-154.

Vincennes. Since Harrison acted personally and not officially, a question which arises is why he did so. It is not known whether Harrison and the judges decided at this time to redefine the status of all blacks in the Territory, or if they planned it from the beginning, but after this Court session, the case took on a different aura.

Meanwhile, Vanorsdel did nothing to endear himself to the community in the ensuing months. Before the General Court convened at the April term 1805, Vanorsdel appeared before the Common Pleas Court in March 1805 charged with assault and battery on a local resident. Johnathan Purcell, Jeremiah Claypoole's partner, and Robert Buntin, Clerk of the Common Pleas, acted as his bondsmen.[15]

Between September 1804 and April 1805, Harrison and the Judges were extremely busy. Six days after he appeared in Court to pay bail for Peggy and George, the Governor and the Judges turned their attention to the District of Louisiana. The Act of Congress of March 26, 1804, gave Harrison and the Judges administrative control over the District and permitted slavery to continue as it had existed under the Spanish and French domains. On October 1, 1804, Harrison and the judges passed "An act

[15] "Cap[ias] for Simon Vanorsdel for Assault and Battery on George Ferguson," Minutes of the Knox County Court of the Common Pleas March Term 1805, 19.

respecting slaves" in the District of Louisiana.[16] The District of Louisiana was made up of five seats, one of which was St. Louis, the city in which Dred Scott and his wife Harriet instituted their suits for freedom--a city where Harrison and the judges adopted Virginia slave codes which were based on the older English codes and affirmed the superiority of the whites, who, by the Purchase, were made citizens of the United States.

This law was a repetition of the black codes that existed in the slave states. This act, proscribed in thirty four sections, prohibited blacks from testifying against whites; from "raising" their hands against whites; from travelling without passes; from congregating without a white present, and prohibited free blacks from associating with slaves.[17]

Also in the fall of 1804, Harrison appointed Hempstead, the lawyer who brought the homines replegiando for the blacks, deputy attorney general of the district of Louisiana and Louisiana Territory. Although Hempstead was a member of the slaveholding clique in Vincennes, Harrison may have been trying to get him out of town. Reportedly, Hempstead left for St. Louis in the fall of 1804, perhaps accompanied by Harrison and the

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[16] Indiana Territorial Laws, "An Act Respecting Slaves," Box A #31 Archives Division Commission on Public Records Indiana State Library.

[17] Ibid.

Judges. In St. Louis, Hempstead earned the reputation as a pettyfogger, a lawyer who takes cases of trumped up charges.[18]

In the late fall of 1804, Harrison also turned his attention to the politics of Indiana Territory. Though he had formerly opposed transition to a second grade gopvernment, he now favored the move. Consequently, on December 4, 1804, Harrison announced the establishment of a second grade government and called for elections on January 3, 1804.[19]

The move to the second grade was manisfestly political. By the transition, Harrison hoped to insure his political safety. Divisionists in Illinois now screamed for separation and even requested joinder to the District of Louisiana. Clark County residents unwaveringly manifested a preference for no slavery in the Territory. Harrison opposed division but knew the eastern counties of Clark and Dearborn, favored the transition to the second grade and would support him in this political decision. So by his political acumen Harrison facilitated a coup. He outmanuevered the

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[18] Gov. [James Wilkinson] to the Sec. of War [Henry Dearborn] December 17, 1805 in Territorial Papers of the United States, Clarence E. Carter ed., vol 13, 307-308.

[19] Journal of Proceedings of the Executive Government, 8.

divisionists and appeased a portion of the group that opposed slavery.[20]

Moreover, he 'fixed' the election date to exclude the participation of some of his opponents, especially those in Wayne County, in the northern section of the Territory. After transition to the second grade, Harrison had the power of an absolute veto, he could convene, prorouge and dissolve the General Assembly and he retained his power to appoint various Territorial officials.[21] On February 1, 1805, the General Assembly held a preliminary session. But the first session did not begin until July 29, 1805. Harrison made sure that his political and personal allies were in the majority of both houses.[22]

The case of Phillis and her children was scheduled to be heard two months after the preliminary session of the General Assembly. But the Court did not hear the

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[20] For a discussion of Harrison's position on the transition to the second grade and on division see: Dunn, Indiana and Indianans, I (5 vols. Chicago, 1919), 322; Goebel, Harrison, 77-82; and Philbrick, Laws of Indiana Territory, xxv-xxxi.

[21] Philbrick, Laws of Indiana Territory, xxv-xxxi.

[22] Ibid. Members of the House of Representatives included: Benjamin Parke and John Johnson of Knox Co.; Shadrach Bond, Sr. and William Biggs of St. Clair Co.; George Fisher, an in-law of the Kuykendalls, of Randolph Co.; Jesse B. Thomas of Dearborn Co.; and Davis Floyd of Clark Co. Members of the Legislative Council included: John Hay of St. Clair Co.; John Rice Jones of Knox Co.; Samuel Gwathmey of Clark Co; and Benjamin Chambers of Dearborn Co.

case April 1805 as expected. There is no reason or reference recorded in the Order Book of the General Court for the judges failing to hear the case on the first Tuesday in April as they ordered the previous September.

One explanation may be that the case was postponed because Simon Vanorsdel was the twelfth of sixteen jurors selected at the April Term. As recorded by Hurst, the Clerk of the General Court, on April 2, 1805, "sixteen good and lawful men [were] selected, tried and sworn."[23] But it appears that it would be incongrous for Vanorsdel to be among the "good and lawful men" with several indictments against him in both the General and Common Pleas Courts.

Another reason that the Court did not hear the case in April was that it likely wanted to give Harrison time to indenture George. On June 13, 1805, Harrison produced Peggy and George before the Court and the Judges discharged the recognizance. Again, there was no mention of Phillis. But between September 1804, and June 1805, an illegal transaction occured which dismayed and astounded even some who held slaves in the Territory. The Indiana historian, Francis Philbrick asserted, "There seems to be little ground for criticism of the Court."[24] This is an amazing statement and there are reasons to

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[23] Indiana Territory, Order Book, 185.

[24] Philbrick, The Laws of Indiana Territory, cxlii.

challenge it. There are reasons to criticize the Court and the governor.

Although the Indiana attorney, Leander J. Monks, maintained that the Territorial Judges were not the most qualified, there is no excuse for their actions, which a local resident described.[25] "Pending the second suit," Isaac Darnielle, a local lawyer, and one certainly not opposed to slavery observed, "during the absence of the counsel for the negroes, and before judgment was rendered...:"

> ...the governor by certain strategem, finesse and cunning, outwitted one of the poor unhappy negroes, called George, as well by assuring him that the court would decide against him as by unmeaning fair collusive promises, induce[d] the poor fellow to consent to bind himself to him the (governor) for eleven years![26]

That the Governor convinced George that the Court would decide against him may indicate the mulatto man believed that the Court favored whites over blacks. But the fact that Harrison indentured George at all, regardless of whether he was free, is a barometer that measures Harrison's opinion of the status of blacks in the Territory.

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[25] Monks, Courts and Lawyers, I, 13.

[26] Isaac Darnielle, The Letters of Decius in "The Letters of Decius," ed. John D. Barnhart, Indiana Magazine of History 43:282.

John Rice Jones, the former attorney general, later contended that "Harrison purchased of Vanorsdale the mulatto man named George." Moreover the former attorney general asserted, "I am not sure as to the price given for him, but I think it was about four hundred Dollars... ."[27] So, Harrison, who claimed that he had acted for the heirs of John and Elizabeth Kuykendall, reportedly purchased George as a servant from Vanorsdel.

Jones could not remember the exact date of the transaction, but as he recalled, "It was about the time a suit about the freedom of those negroes was depending in the Genl [sic] Court of Indiana Territory, when [George] and [the] others were claimed as slaves[,] the property of the heirs of the Kuykendalls, Mr. Hempstead appearing for the slaves."[28] Here again, the former attorney

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[27] Indiana Territory, "The Deposition of John Rice Jones taken at Kaskaskia in the County of Randolph in the Illinois Territory on Monday the fourth Day of July one thousand Eight hundred and ten at the house of Benjamin Stevenson....issued out of the Court of Chancery of the Indiana Territory in a suit therein depending wherein Johnathan Purcell is complainant and George Wallace Junr. & Co. and ~~General Washington Johnston~~ are defendants" in Purcell v. George Wallace, Jr. & Co. Box 15 #1027 Archives Division Commission on Public Records Indiana State Library. This issue began over a horse stolen by Indians for which Harrison promised to reimburse Purcell. George Wallace, Jr. was a Justice of the Peace in Knox County in 1804 during the first trial of Phillis, Peggy and George. See "Recognizance" for Thomas Levins & Simon Vanorsdal signed by George Wallace, Jr., J.P. K[nox] C[ounty]," September 8, 1804 in Archives Division Commission on Public Records Indiana State Library.

[28] "Deposition of John Rice Jones."

general in his testimony spoke of the 'freedom of the negroes,' but called them slaves.

Johnathan Purcell supported Jones' allegations and even contended that Harrison was a partner in George Wallace, Jr. and Company with George Wallace, Jr. of Vincennes and James Wilkins of Philadelphia. Purcell maintained that Harrison used funds from the partnership to purchase George.[29] Peter Kuykendall, the eldest son of John and Elizabeth, later sued Claypoole and Vanorsdel for four hundred dollars. The records do not indicate specifically what the debt case was for.[30]

As Darnielle pointed out, "In this case, the governor has done an enormous injury either to the poor unhappy negroe [sic], or to the heirs of John & Elizabeth Kuykendall." He asked, "what greater injury could the governor do to a man than to deprive him of his liberty for eleven years?" The lawyer then added, "If they were not free, why should the governor by an illicit

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[29] Indiana Territory, Purcell vs. George Wallace, Jr. & Co. and ~~General--Washington--Johnston~~ in Chancery Court Records Byron Lewis Library Vincennes University.

[30] See: Indiana Territory, "Summons," Peter Kuykendall v. Claypoole and Vanorsdell . See also Minutes of the Knox County Common Pleas Court May 25, 1807 Peter Kuykendall paid a fee for an arrest warrant for Jeremiah Claypoole.

interference prevent the heirs from a free disposition of their property?"[31]

Since the case was pending in Court, and Vanorsdel claimed only to act as agent for the heirs, and not as the owner of the blacks, he had no right to sell George and Harrison had no right to purchase him. The Court never addressed this dilemma. No further reference was made to George and Harrison was neither reprimanded nor indicted for obstructing justice. Darnielle held that the Court discharged the case in reference to George.[32] But no record of the discharge or dismissal in reference to George appeared in the Order Book of the General Court. Moreover, Phillis, Peggy and George were being tried together not on separate counts. So how could the Court discharge one without discharging the other two?

Jacob Dunn excused Harrison's actions contending that Harrison "did as much in behalf of these two unfortunates as anyone then in the western part of the Territory would have done." He added, "At least, [Harrison] and his friends did something while his political enemies, who were so shocked at his doing failed to extend a helping hand."[33] But, if George were

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[31] Isaac Darnielle, The Letters of Decius, in "The Letters of Decius," ed. John D. Barnhart, Indiana Magazine of History, 43:282.

[32] Ibid.

[33] Jacob Dunn, Indiana A Redemption from Slavery, 314.

free, Harrison certainly did not help him by indenturing him.

The day after Harrison produced George and Peggy in Court, the Court turned its attention to the fugitive slave case. Henry Hurst had issued a summons for Jeremiah Claypoole. This summons, dated July 14, 1805, instructed Claypoole to appear in the General Court to give a deposition. In this second deposition, Claypoole established that Phillis and her family did not escape to Indiana Territory, but that he had brought them.[34]

Whereas Claypoole formerly claimed that Elizabeth Kuykendall Stockwell sold him Phillis, Peggy and George in 1793 or 1794, he now contended that John Kuykendall, Jr. deeded Phillis, and the two children to him and that afterward he brought the "several negroes" to Knox County. Claypoole avowed that he "believe[d]" that John, Jr. gave him the original "Deed of Gift or paper in writing."[35]

John Kuykendall, Jr. could not have deeded Phillis and her children to Claypoole or anyone else in 1793 or 1794. He died in 1785. This is indirectly corroborated because when John and Elizabeth's daughter, also named

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[34] "Deposition of Jeremiah Claypoole," June 17, 1805 in William English Collection The University of Chicago.

[35] Ibid.

Elizabeth, married in Kentucky in 1791, her marriage bond listed her as the "daughter of Jno. [Jr.], deceased."[36]

Furthermore, other members of the immediate family could not have done the deeding. None of the sons would have reached their majority in 1785. Peter, the eldest, was born in 1775. Moreover, before her death in 1794, Elizabeth Kuykendall married William Stockwell. In 1794, Peter still would not have been twenty-one and if Stockwell survived his wife, then he would have had a claim to her possessions.[37]

Claypoole might have considered the fact that the heirs were not old enough to engage in a legal contract when their parents died, for he now maintained that the deed was made out to him and the heirs of John and Elizabeth Kuykendall.[38] Claypoole's testimony became even more bizzare when he admitted that he no longer had the deed. He claimed that he "lost it and has been

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[36] "Jefferson County Kentucky Marriages 1785-1800, 1800-1826," in W. J. Garmon Papers. Mr. Garmon copies this from the National Geographical Society Quarterly Vols IV-XII 1915-1923. The Garmon Papers consists of this bound transcript in the Genealogy Division Indiana State Library. According to this record Elizabeth Kuykendall, "daughter of Jno. dec." married Samuel Green in 1791.

[37] Mrs. R. L. Jordan, researcher, "Which Kuykendall-Kirkendall Families Settled W. Va. and S.W. Penn.," [n.d.,n.p.] in the Knox County Public Library, Vincennes, Indiana. Mrs. Jordan found that John Kuykendall, Jr. died in 1785.

[38] George Benson Kuykendall, History of the Kuykendall Family, 51.

unable to find it for several years." Moreover, he maintained that "a number of his papers were destroyed by mice and [that he] missed the ...deed or paper in writing about the same time... ."[39] It is obvious that Claypoole lied. Had he ever had a deed, Claypoole could have gotten a certified copy of it from the Hampshire County Court House. Why he lied is not known. Perhaps it was to protect Phillis and the two children from Vanorsdel.

One possible means by which John Kuykendall, Jr. could have given Claypoole Phillis and her children, without a written deed, was by a parole gift which is a verbal gift. But under Virginia law, parole gifts were generally invalid. However, a decision rendered in Virginia in 1801 held that in a detinue for slaves, evidence of five years possession, though under a parole gift was admissible to bar the plaintiff's demand.[40]

Therefore, the heirs may have believed that had they instituted an action of detinue against Claypoole, the latter would still have retained possession of Phillis and her children. An alternative for the heirs, had they had a valid claim, would have been to institute an action of trover. Then they possibly could have recovered

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[39] "Deposition [of Jeremiah Claypoole]," June 15, 1805.

[40] Turner v. Turner (Va) 1 Washington, (Va) 139 (1801). A detinue is a common law action used to recover personal chattles wrongfully held by a person whose original holding were lawful.

damages from Claypoole for wrongfully withholding their property. But as one historian stressed, "suits of detinue were suprisingly infrequently used" and he found only one instance in which an action of trover was brought for recovery of a black woman.[41]

Who, if anyone, actually and legally owned Phillis and her children, perhaps will never be known. Undoubtedly the heirs believed they had a right to them though their father died intestate. One nagging question is why the heirs did not simply claim Phillis and her children. Another nagging question is why Vanorsdel was used as an intermediary, when the heirs were in Vincennes. Perhaps they hired Vanorsdel to kidnap Phillis and her children and to sell them. Whatever the case, none of the claimants had possession of the blacks.

On June 17, 1805, four days after Harrison produced Peggy and George before the Court, Vanorsdel, by some means acquired custody of Peggy. There is no explanation of why Vanorsdel held Peggy, but the fact that he did likely indicates the Courts disinterest in the fugitive slave issue and its disregard for the dispensation of justice in regard to blacks in the Territory. The Court allowed Peggy to remain in

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[41] Philbrick, Laws of Indiana, cxl, cxc. An action of trover is an action by which to recover damages from someone who is illegally withholding property. The action of trover was instituted in 1806 in Randolph County for the black woman.

Vanorsdel's custody and decided to let the fugitive slave case rest until the following September.

About two months after Vander Burgh continued the case, Benjamin Parke, now also serving as a representative in the lower house of the General Assembly of Indiana Territory, introduced a bill supporting slavery in the Territory. On August 1, 1805, he and Davis Floyd of Clark County, were appointed to a committee "to examine the propriety of introducing bond servants of color into [Indiana] Territory."[42]

Parke reported on the bill and it was read for the first time on August 2 and then again on August 3. The House approved it on August 5 and it was passed by the Council on August 17. On August 19, members of the General Assembly sent another memorial to Congress asking for the admission of slavery into the Territory. Parke, John Johnson, and John Rice Jones signed the memorial. On August 26, 1805, as an indication of his support of the sovereignty of the people over the jurisdiction of the federal government, Harrison approved the second indenture law in the Territory without hearing a reply from Congress.[43]

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[42] Journal of General Assembly of Indiana Territory, 53.

[43] Ibid., 54-56, 94; Philbrick, Laws of Indiana Territory, 136-139.

When the Court recnovened in September, Vanorsdel brought Peggy to Court. After hearing the arguments, Vander Burgh, sitting alone on the bench, decided:

> When a cause comes before me in which the freedom or slavery of a human being is involved[,] I feel such diffidence to determine that question, that in the case of the Habeas Corpus...I determined to postpone it until the next term when I hope to have the assistance of either or both of my brethren.[44]

This was the first time, since the case began, that the extant of the record showed that the judge admitted that the issue was freedom or slavery.

Nearly three months after Vander Burgh's pompous oration, the General Assembly sent another petition for slavery to Congress. Benjamin Parke, John Johnson and John Rice Jones, all Harrisonian advocates, signed the document dated December 18, 1805. But the same day, ninety-four residents of Dearborn County petitioned Congress for joinder to Ohio. On February 14, 1806, a House committee reported unfavorably on both petitions.[45] Harrison now contended with divisionists on the other front while he and his supporters tried relentlessly to 'legalize' slavery in the Territory.

While the Territorial administration tried to build a slavocracy, Vanorsdel tried to make money. Between the

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[44] Order Book, 188; "Attachment to Return on Habeas Corpus Decided April Term 1805."

[45] Dunn, "Slavery Petitions and Papers," 493-496.

September Term 1805 and the April Term 1806, the Court again arrested Vanorsdel. This time, for kidnapping and selling Abraham, a servant of William Bullit, a merchant of Vincennes. Vanorsdel allegedly assisted by William Briscoe, a resident of Vincennes, forcibly seized Abraham and carried him to Kentucky where the boy was sold. Vanorsdel's action not only show that he believed that blacks were merchandise and maketable commodities, but that he had no respect for the rights or 'property' of the citizenry.

What makes the case of Abraham even more interesting is that Bullit had purchased the child from Jeremiah Claypoole who had purchased him from the Orphans' Court. Subsequently, Vander Burgh placed Vanorsdel under a twelve hundred dollar bond and during the September Term 1806, he was indicted for the kidnapping.[46]

The Court heard Peggy's fugitive slave case at the April term 1806. On April 10, 1806, "after hearing the evidence in relation to the return on the Habeas Corpus," the Court made a remarkable decision, in relation to Peggy. This decision only affected Peggy. The Court did not breathe a word about Phillis or George. Vander Burgh had acknowledged that this was a case to decide the "freedom or slavery" of the blacks involved. Yet,

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[46] Indiana Territory, Order Book, 248; "Recognizance," Us v. Vanorsdall, Box 8 #587 Archives Division Commission on Public Records Indiana State Library.

because she had not escaped from Virginia, the Court decided that "the negro girl Peggy [was] not a fugitive from Justice or Service within the meaning of the act of Congress, as stated in the ...return."[47] The Court ordered that the habeas corpus and the return be dismissed.

Yet, Vander Burgh and the other judges hedged on addressing the question of Peggy's status. Since she was not a fugitive slave, was she then free? And, since she was not a fugitive slave, did it mean that she was not the property of the heirs of Elizabeth and John Kuykendall, Jr? Vander Burgh contended that though Peggy was not a fugitive slave "within the meaning" of the fugitive slave law, she was not exactly free. He added:

> But this order is not to impair the right that Vannorsdell, or any other person shall have to the said negro girl Peggy. Provided he Vannorsdell or any other person can prove said negroe [sic] Peggy to be a slave. Nor shall this order impair the right of said Peggy to her freedom provided that the said Peggy shall establish her right to the same.[48]

The proviso Vander Burgh attached to this opinion foreshadowed the degraded and inferior status of free-blacks in the United States that Taney so accurately described in the reading of the Dred Scott decision.

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[47] Indiana Territory, Order Book, 236-237.

[48] Ibid.

According to Taney in 1857, free blacks had been excluded from the general clauses of the Declaration of Independence and the Constitution; they were regarded as a distrubing element in the South and were discriminated against by laws imposed upon them in the Northern or 'free' states. Therefore, Taney proclaimed, all blacks, "Might justly and lawfully be reduced to slavery."[49] Moreover, he argued, blacks, even if emancipated, were subject to the authority of the dominant race to whom they were subjugated.

Of Peggy and the Court's decision, Dunn asserted:

> Although the case had been tried twice and the girl had twice been set free, the judges were so uncertain as to the propriety of their decision that they deliberately attempted to prevent it from being final. It is difficult to conceive why there should have been any uncertainty as to the effect of the Ordinance on slaves; but if they were in doubt on that question, it is beyond comprehension that they could have doubted the right of the ancient settlers to hold their slaves... .[50]

Amazingly, Dunn further and condescendingly maintained, "It was perhaps light consolation to George that he came out of the difficulty a slave for eleven years while Peggy went free."[51]

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[49] Fehrenbacher, The Dred Scott Case, 343, 348.

[50] Dunn, A Redemption from Slavery, 238.

[51] Ibid.

Peggy, however, was neither literally nor physically free. Vanorsdel failed to bring Peggy into Court to hear the verdict during the April Term. According to testimony submitted later, on January 1, 1806, wherever Peggy was, Vanorsdel reportedly, "with force of arms" assaulted, beat and imprisoned her "without reasonable cause."[52] Hence, Jacob Kuykendall, the coroner of Vincennes and a cousin of John Kuykendall, Jr., for reasons not explained, brought a suit against Vanorsdel in Peggy's behalf as her next friend.[53]

In April 1806, the same term that the Court decided that Peggy was not a fugitive slave, it ordered that Peggy, "an infant under twenty-one be permitted to sue Simon Vannorsdall in this Court in forma pauperis, and that she have sufficient time to advise with counsel and

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[52] "Deposition [of Peggy]," Peggy v. Vanorsdall Judg[men]t Sept 1808 Judicial Box 2 Folder 20 William English Collection The Joseph Regenstein Library The University of Chicago. Jacob Kuykendall, a first cousin of John, Jr. brought this case in Peggy's behalf as her "next friend." It is not known why he interceded. Kuykendall held indentured servants in Vincennes. See "Transfer of Indenture from Toussaint DuBois to Jacob Kuykendall," dated November 18, 1818, in William Prince Collection 1809-1834 Indiana Division Indiana State Library. On the back of this Indenture is a record dated February 15, 1810 "Robt. McGary Transfer and Sale of negro Boy Sam to Geo. Wallace $360" Wallace later transfered Sam to Toussaint DuBois.

[53] Order Book, 239. A "next friend" is someone who institutes a legal case on behalf of a minor or someone who cannot institute the case in their own behalf.

summon witnesses."[54] It is not known whether the Court knew that Peggy was in Vanorsdel's custody when it continued the case the previous September or rendered its decision in April 1806. However, the Court further ordered that Peggy "remain in the possession of Henry Hurst [,the Clerk of the General Court,] until the decision of the same cause."[55] Why the Court remanded Peggy into the custody of the Clerk of the General Court instead of Jacob Kuykendall, who appeared as her "next friend," is not known. Surely Kuykendall, bringing the suit in her behalf, indicated that he was sympathetic to Peggy while Jurst was Harrison's supporter.

It was two years later, in September 1808, when the Court finally heard Peggy's case against Vanorsdel. This time, instead of the Judges deciding the case, Peggy went before a jury. Somehow, Vanorsdel regained custody of Peggy from Henry Hurst. She later complained that "for the span of two years and nine months," Vanorsdel continued to imprison her and did "other outrages to her."[56]

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[54] Ibid. Forma Pauperis literally means in the form of a pauper. In this instance, the Court allowed Peggy to institute the case without funds or payment of costs.

[55] Ibid.

[56] "Deposition [of Peggy]."

Jacob Dunn incorrectly contended that Peggy sued Vanorsdel for wages.[57] She sued him for one-hundred dollar damages in a plea of Trespass, Assault and Battery and imprisonment. She maintained that she was not and never had been a slave.[58] John Johnson, the attorney for Vanorsdel, a slaveholder in Vincennes and a pro-Harrisonian member of the General Assembly, maintained that "Peggy ought not to...maintain her action against [Vanorsdel] because...Phillis, [the] mother of...Peggy [was] born a slave for life in Hampshire County, Virginia... ."[59]

Johnson's contention precisely mirrored the grim epithet that Taney spat upon blacks fifty years later when the Chief Justice maintained that blacks, whose ancestors were imported into this country and sold as slaves, were not entitled to the rights or privileges of citizens and that they, therefore, had no right to sue in any court in the United States.[60]

Johnson disregarded the Court's earlier decision that Peggy had not been proven a slave. The unstated but

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[57] Dunn, Indiana A Redemption from Slavery, 315; Dunn, Indiana and the Indianans, I, 208.

[58] "Deposition [of Peggy]".

[59] "Deposition [of Vanorsdel by John Johnson]" Peggy v. Vanorsdall William English Collection Box 2 Folder 20 The University of Chicago. This deposition was taken and signed by John Johnson.

[60] Fehrenbacher, The Dred Scott Case, 341.

underlying supposition of his defense was that since Phillis was born a slave for life in Virginia, her daughter Peggy was also a slave. Johnson acknowledged, however, that "Phillis & Peggy were brought from the State of Virginia," but contended that it was "without the knowledge and consent of the heirs."[61]

The entire fugitive slave episode was farcical enough with four of the heirs of John and Elizabeth Kuykendall in Vincennes during the entire course of the trials, but Johnson, in a depostion to the Court for Vanorsdel, made an astounding contention that made the previous four and a half years an unmitigated mockery. He told the Court that on "the twentieth day of August 1804, Peter Kuykendall and Henry Kuykendall, two of the heirs...by deed of Bargain transfered all their right, title and interest of and two [sic] Phillis and her increase...to...Simon Vannorsdall" and that "by virtue of...[the] deed...Simon claimed Peggy as a slave for life."[62]

August 20, 1804, was seven days before the Court issued the first writ of habeas corpus and several weeks before the first fugitive slave trial. At the first trial, the Court decided that Phillis, Peggy and George were not fugitives because the deeds offered by Claypoole

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[61] Ibid.

[62] Ibid.

and Vanorsdel were insufficient. And, at that time Vanorsdel offered no deed from the heirs.

The two new General Court judges, Benjamin Parke and Waller Taylor sat on the bench with Henry Vander Burgh, the only judge who sat during the entire four and a half year period. There is no record that Peggy's counsel, the pro-Harrisonian attorney general, Thomas Randolph, questioned this contention. If Peter and Henry deeded Vanorsdel Phillis and her children, the heirs were in violation of the law.

As previously mentioned, their mother, Elizabeth remarried and her husband would have had a claim to her property. Moreover, even if the heirs had a valid claim to Phillis and her children, there were at least three other heirs besides Peter and Henry who, legally, would have had to give their consent to the sale.

Yet, in the frontier situation, with the promiscuous lawlessness that was permitted in the Territory, it is possible that Peter and Henry did illegally deed Phillis, Peggy and George to Vanorsdel. This act would provide an explanation of why Harrison indentured George and why Peter Kuykendall brought a suit against Claypoole and Vanorsdel for $433.33 1/3 in a debt case.[63] However, if Vanorsdel never paid the heirs, there was still the

[63] Indiana Territory General Court, Peter Kuykendall v Claypoole, et al. Box 11 # 773 Archives Division Commission on Public Records Indiana State Library.

question of who, if anyone, actually owned Phillis and her family.

Notwithstanding the legal questions, the case went to a jury which, predictably, returned a verdict in favor of the defendant, Simon Vanorsdel. Although the Court had allowed Peggy to sue Vanorsdel in forma pauperis, it ordered her to "take nothing by her writ, but for her false clamour be [illegible] and that she pay ...the defendant his cost."[64] It can be assumed that Vanorsdel claimed Peggy as a slave for life. Nothing more is known of her. Her sister Hannah, who was involved in a litigation during the same Court, fared little better than Peggy.

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[64] Order Book, 337. Thomas Randolph later ran as a proslavery candidate for the Territory's delegate to Congress, but was defeated by Jonathan Jennings.

Oh, my dark children, may my dreams and my prayers
Impel you forever up the great stairs
For I will be with you till no white brother
Dares keep down the children of the Negro mother.
Langston Hughes

## Chapter Three

### Phillis and Hannah

Sometime in late October or early November of 1805, Vanorsdel seized Phillis' other daughter, Hannah, claiming that she was a fugitive slave.[1] Where Hannah was or whom she was with during the trials of Phillis, Peggy and George, is not recorded. Neither is it clear why Hannah was not tried with her mother, brother and sister. But at the time, no habeas corpus suit was instituted for her. Harrison was perhaps too busy or uninterested to intervene in Hannah's behalf. He and the Territorial legislators, and residents with slaveholding interests were taking further measures to establish slavery in the Territory.

But while trying to establish slavery in the Territory, Harrison also fought a battle with divisionists who wanted a separation between 'the Illinois' and 'the Indiana'. In 1805, three-hundred and fifty residents from Randolph and St. Clair counties

[1] "Return on Writ of Habeas Corpus," in Hannah v. Beckes William English Collection Box 2 Folder 20 Joseph Regenstein Library The Univerity of Chicago.

prepared a petition asking Congress to divide the Territory and to permit slavery in 'the Illinois'. This petition was accompanied by another signed by a majority of the Territorial legislature on August 19, 1805.[2] The latter petition commented on "the propriety" of introducing slavery into the Territory and "principles of Justice and policy--Justice in relation to slaves and policy in relation to the Southern States." Especially since, "the population west of the Ohio must chiefly be derived from the Southern and Western States."[3] The same year, residents from Dearborn County, in the eastern most section of the Territory, petitioned Congress for joinder to Ohio.[4] Harrison and the legislature, however, maintained control. In August 1805, after they outmanuevered the divisionists, they passed a new indenture law.

Harrison and the General Assembly were asserting the eminence and sovereignty of the people of Congress. Both would have agreed unreservedly with Taney when he announced:

> It may be safely assumed that citizens of the United States who migrate to a Territory belonging to the people of the United States,

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[2] Jacob Dunn, "Slavery Petitions," Indiana Historical Society Publications 2:476-492.

[3] Ibid., 476-483.

[4] Dunn, "Slavery Petitions and Papers," 492-493.

> cannot be ruled as mere colonists, dependent upon the will of the general Government, and to be governed any any laws it may think proper to impose.
> .....
>
> The Territory being a part of the United States, the Government and the citizens both enter it under the authority of the Constitution, with their respective rights defined and marked out; the Federal Government can exercise no power over his person or property... . Thus the rights of property are united with the rights of person,... the powers over person and property of which we speak are not granted to Congress, but are in express terms denied, and they are forbidden to exercise them... .[5]

It probably is not coincidental that the General Assembly passed a new indenture law just one week after its members signed the slavery petition. Nor does it seem coincidental that Hannah was taken as a fugitive slave only a few months after the passage of the new indenture law in 1805, as her mother, sister and brother had been detained a few months after the passage of the indenture law of 1803.[6]

Vanorsdel did not pursue a fugitive slave offense this time. Moreover, it appears that the Court was not interested in pursuing another fugitive slave case, but

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[5] Taney quoted in Benjamin Ringer, 'We the People' and Others, 1113,1114. See also Don Fehrenbacher's discussion of the opinion of the Court on slavery in the Territories in The Dred Scott Case, 365-388.

[6] The act of 1803 was passed on September 22, 1803 and went into effect on November 1, 1803. Four months later, on March 3, 1804, a homines replegiando was issued for Peggy, George and Phillis.

that the judges, who were such an integral part of the Territorial system that wanted slavery, wanted to redefine indentured servitude. Instead, on November 8, 1805, he sold Hannah to Daniel Sullivan, then Sheriff of Knox County. Hannah supposedly "did purpose and voluntarily agree in the presence of witnesses to serve... Daniel Sullivan twelve years." The condition to which Hannah reportedly agreed was that "Sullivan...procure a release of her time of service or her freedom from...Simon Vanorsdel and the heirs of John Kuykendall [Jr.] & Elizabeth his wife... ."[7]

Why Sullivan had to obtain a release from Vanorsdel and the heirs is not explained. Perhaps whether the heirs actually held Hannah as a slave will never be discovered. There had been no trial or judgment rendered declaring that Hannah was indeed a fugitive, and no record of who issued Vanorsdel a warrant for Hannah's arrest and a certificate authorizing him to remove her as a fugitive slave.

Since no Court rendered a decision declaring Hannah a fugitive slave or any other kind of slave, indenturing her made the extralegal indenture act of 1805 even more pernicious. The new indenture act incorporated the

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[7] "Return on writ of habeas corpus," Vincennes Sept. 9, 1808, B. V. Beckes, Jr. in United States v. Beckes in William English Collection Judicial Box 2 Folder 20 University of Chicago.

provisions of 1803 but was more repressive in some aspects. For example, one provision of this act provided that: "In all cases of penal law where free persons are punishable by fine, servants shall be punished by whipping, after the rate of twenty lashes for every eight dollars, so that no servant shall receive more than forty lashes... ." This dual standard was also manifested in "An Act regulating the firing of Woods, Prairies and Other Lands. Servants were to be whipped "not exceeding thirty-nine lashes," whereas free persons were fined.[8]

Two of the provisions of the indenture act of 1805 required females to serve until they reached thirty-two if they were under fifteen when brought into the Territory, or until twenty-eight if they were born of indentured parents in the Territory. The latter was apparently a means to insure hereditary servitude. Moreover, this act, like that of 1803, provided that if potential servants refused to sign an indenture, they could be removed to anywhere in the United States or its Territories and sold as slaves.

Therefore Hannah had little choice. She faced a possible conviction as a fugitive slave and being carried out of the Territory, or if she refused to be indentured, she could have been removed to 'any place' in the United States and there sold as a slave. So, on November 8,

[8] Philbrick, The Laws of Indiana Territory, 465, 398.

1805, Hannah signed the indenture binding herself to Daniel Sullivan for twelve years.

Ironically, on November 7, 1805, the day before he indentured Hannah to the sheriff, Simon Vanorsdel had appeared in Daniel Sullivan's Court. He was among the twelve jurors in litigation over land wherein George Wallace, Jr., a justice of the peace and judge of the Common Pleas Court, sued John Gibson, the Secretary of the Territory and an oppponent of the proslavery group in Vincennes. Wallace, also a merchant, reportedly issued Vanorsdel credit at Wallace and Company after Harrison purchased George. When Vanorsdel and the eleven other jurors returned the verdict, it was in Wallace's favor and Gibson lost property in Palmyra Township.[9]

Though Vanorsdel had no more right to sell Hannah to Sullivan than he did George to Harrison, the illegality of his act was overlooked. The buying, selling and trading of slaves was recorded in a local register. Between 1805 and 1807 fifty "slaves" ranging in age from two to sixty years, were registered before the Clerk of the Knox County Common Pleas Court.

The Knox County register listed the name of the "master," and that of the "slave," the age of the "slave," the state from which the "slave" came, the years

[9] "Inquisition Indented, Wallace v. Gibson" in Sheriffs' Executives 1792-1801 Byron Lewis Library Vincennes University.

of service, and the date they were registered. Hannah and Sullivan's names did not appear on the register, however. The first entry was recorded on November 11, 1805, three days after Hannah was indentured. Moreover, the register listed the indentures of "slaves" brought into the Territory and not those already there. Undoubtedly there were more than fifty "slaves" in Knox County during this period. In March 1807, according to the records of the Common Pleas Court, Knox County residents paid taxes on 108 "slaves and servants." By 1810, census data showed that there were 237 "slaves" in the Territory.[10]

Between the time that Vanorsdel sold Hannah to Sullivan and the initiation of her habeas corpus suit, territorial residents voiced their political opinions regarding slavery and division of the territory. On November 25, 1805, nearly three weeks after Hannah's indenture, some residents of Randolph and St. Clair Counties, in a politically astute manuever, reversed their position and condemned the indenture act of 1805 as a violation of the Ordinance and vowed that they would never consent to such a violation. The unstated, but

[10] Knox County Register of Negroes and Mulattoes. See also: Clark County [Indiana Territory] Register of Negroes and Mulattoes in Archives Division Commission on Public Records Indiana State Library. This register listed 35 slaves, two of which were brought to the County from Knox; Donald B. and Wynelle Dobb, Historical Statistics of the United States 1790-1970 (Montgomery, 1976), II Midwest.

implied message in this petition was that residents of the two counties would never violate the law as Harrison and his supporters did. However, the Illinoians added, in the petition, "When Congress shall deem a Change of the Ordinance expedient we would Cheerfully agree to the measure"[11]

But Harrison would not be outdone. He kept appointing his friends to the positions of power in the Territory. As one historian noted, "His appointments to territorial offices were indeed made exclusively from his intimates in Knox County." But, as this historian added, Harrison's "use of appointing power...only irritated and consolidated his enemies."[12]

On December 18, 1805, the General Assembly forwarded another petition for slavery to Congress. Congress considered this petition along with the others that had been submitted in the summer of 1805. While the House reported favorably upon the petitions for the admission of slavery, the Senate rejected them.[13] In the fall of 1806, resolutions of both houses of the General Assembly, again, called for Congress to suspend or to modify article six of the Ordinance for a period of ten

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[11] Dunn, "Slavery Petitions," 483-491, 503-505.

[12] Philbrick, The Laws of Indiana Territory, lv.

[13] Annals 9 Congress 1 session (HR), 293, 466-468; American State Papers: Miscellaneous 1:450-51.

years. The petitioners argued "That the abstract question of liberty and slavery [was] not involved in the suspension of the...article" since it would not increase the number of slaves in the United States but would distribute them over a wider area.[14]

This petition was communicated to the House of Representatives on Februry 12, 1807, the fifteenth anniversary of the passage Fugitive Slave Act. It was referred to a committee chaired by Benjamin Parke, who had been elected delegate to Congress from Indiana Territory. Parke's committee reported in favor of the petition declaring, "That it is expedient to suspend, from and after the 1st day of January 1808, the sixth article of compact...passed the 13th day of July, for the term of ten years."[15]

The Senate tabled the petition. However, the Harrisonians were relentless. On September 17, 1807, Harrison approved two statutes regarding blacks in the Territory. One was "An act concerning servants," and the other was another indenture act entitled, "An Act concerning the introduction of Negroes and Mullattoes [sic] into this Territory."[16] The General Assembly, by

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[14] Ibid.

[15] American State Papers: Miscellaneous I:477.

[16] Philbrick, Laws of Indiana Territory, 463-467; 523-526.

passing this act, and Harrison, by approving this act, clearly denied the power of Congress to interfere with or to govern Territorial affairs. Among other provisions, the "Act concerning servants" dictated the means by which servants were punished for rioting, travelling without passes, being "lazy and disorderly," and for running away. This act also delineated the obligations of masters.[17] The new indenture law was basically a repetition of the 1805 law.

Not satisfied with the two new laws, later in 1807, Harrison and the General Assembly petitioned Congress again to admit slavery in the Indiana Territory. However, in October 1807, Clark County residents sent another counter petition to Congress. These memoralists stressed that "in no case has the voice of the citizens been unanimous.... . And although it is contended by some, that [there is] a great majority in favor of slavery,...the fact is certainly doubtful."[18]

Moreover, the petitioners from Clark County declared that "It seems to be the general opinion...that [slaves] are an evil." They reminded Congress that "many [whites] have actually emigrated to this Territory, to get free from a government which tolerates slavery." They also maintained that slavery "is inconsistent with the

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[17] Ibid., 463-467.

[18] Dunn, "Slavery Petitions," 507-10; 518-520.

principles upon which our constitution is to be formed."[19] The Senate must have agreed with the Clark County residents because it again rejected slavery in the Indiana Territory.[20]

During the same time that the proslavery group petitioned Congress for slavery, Illinois divisionists in Randolph and St. Clair counties blasted Harrison for his handling of land titles and later accused him of mishandling his administration. Unwittingly, the anti-Harrison faction affected the decision in Hannah's case in 1808.

Not all Illinoians supported division and not all divisionists opposed slavery, but as early 1803, a group of divisionists from the Illinois became increasingly anti-Harrison. The tension increased especially after he announced the establishment of a second grade government in December 1804. Believing that they would bear the new government's expense in unfair proportion, Illinois divisionists began petitioning Congress for a separation of the Territory.

As they became thoroughly disenchanted with Harrison, the Illinois divisionists charged that he speculated on land ventures and later, that he conducted

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[19] Ibid.

[20] American State Papers: Miscellaneous, I:484; Annals 10 Congress 1 Session (Sen), 22-27, 31.

himself in a manner "unworthy of his office and disgraceful to the Nation." Moreover, they maintained that Harrison "sanctioned an indenture law knowing that all involuntary servitude was forbidden in the Territory by the Ordinance of 1787," and they asserted that the indenture law might more properly be called "A Law for the Establishment of disguised slavery in opposition to the National Will."[21]

By 1806, Harrison faced another element of opposition. There was increasing agitation for a greater degree of self-government.[22] So now Harrison contended with three groups of opponents--the eastern and western divisionists, those opposed to slavery and those who clamoured for a more representative government. The struggle between anti-Harrisonians and pro-Harrisonians came to a climax in 1808, the year of Hannah's habeas corpus trial. On July 25, and August 13, 1808, elections were held in St. Clair and Randolph counties, respectively. Anti-Harrison pro-divisionists were elected to the lower house of the General Assembly from both counties. The pro-Harrison anti-divisionists were on the defensive.

On August 10, 1808, two days before the election in Randolph county, Henry Vander Burgh issued a writ of

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[21] Philbrick, Laws of Indiana Territory, xxxviii.

[22] Goebel, Harrison, 83.

habeas corpus commanding Benjamin V. Beckes, Jr. to bring Hannah before the General Court. About three years after he indentured her, Sullivan supposedly "bargained and sold" Hannah to Beckes.[23]

When Beckes returned the writ of habeas corpus, dated September 9, 1808, he included the original indenture in it and claimed that Sullivan and he agreed that Beckes was to "keep...Hanah [sic] for sometime and if he should like her as a servant then... he was to pay Sullivan the consideration money, but if [he] did not like her....then he was to return her to...Sullivan & pay him the customary hire of servants for and during the time he...kept [her]." Beckes also contended that "by virtue of this agreement... Sullivan Delivered [sic] Hanah" with her consent.[24]

Beckes argued that Phillis, "the mother of Hanah [sic]" had been born a slave for life in Virginia, and that therefore Hannah was also a slave. He also maintained that Daniel Brown had intended that Phillis and all of her children become the absolute property of his grandchildren. Though Beckes claimed that Sullivan procured a release from the heirs of John Kuykendall, Jr., his wife and Simon Vanorsdel, the indenture to

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[23] "Writ of Habeas Corpus," in Hannah v. Beckes.

[24] "Return on Habeas Corpus," in Hannah v. Beckes.

Sullivan noted only that the heirs released their claim to Hannah for "absolute slavery."[25] The indenture to Sullivan, dated November 8, 1805, was signed, sealed and delivered in the presence of Elihu Stout, justice of the peace and Peter Jones, who held the positions of judge of the Common Pleas, and Justice of the peace, and, as of September 5, 1805, auditor of the Territory.

The Court scheduled Hannah's habeas corpus trial on September 12, 1808, just a few days before the jury would deliver the verdict in the suit of her sister, Peggy, against Vanorsdel, and during the time when the opposition to Harrison gained the most strength in the General Assembly. The first session of the General Assembly was sitting when Hannah's trial began and the second session was scheduled to begin on September 26, 1808. The lower house bitterly attacked Harrison's policies.

Parke, back from Congress, now sat on the bench of the General Court with Henry Vander Burgh and Waller Taylor. Since the opposition so bitterly attacked Harrison's policies, no doubt Parke and the other judges, all proslavery supporters, were on the defensive. Thomas Randolph, another Harrisonian and attorney general of the Territory, prosecuted Beckes.

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[25] Ibid.

Henry Hurst, the Clerk of the General Court, wrote in the Court record only that on September 13, 1808, the Judges dismissed the writ of habeas corpus. What took place in Court that day was described in the return on the writ of habeas corpus and in a report of October 3, 1808, Parke sent to General Washington Johnston, a lawyer, proslavery supporter and then chairman of a committee appointed in the General Assembly to consider the subject of slavery in the Territory.

During the trial, Beckes claimed that John Kuykendall, Jr. survived his wife Elizabeth and that he died in 1800. Beckes also claimed that Phillis and "the children born of her body after the...Deed poll[,] became the property of the children of John and Elizabeth Kuykendall as slaves (being born as such)."[26] There is no record that the defense ever asserted that though born a slave, Hannah became free when she became subject to article six of the Ordinance. Beckes further claimed that Sullivan loaned Hannah to him to see if he "liked her" and that subsequently, Sullivan sold her to him. He added that Hannah, of her "own free will consented" to the transfer of indenture. However, the transfer of indenture carried no seal, no month and no date, it only listed the year as 1808.

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[26] Ibid.

Instead of addressing the point of the inadequacy of the transfer of indenture, Beckes threatened:

> if the Court should be of the opinion that the...indenture to Sullivan should be void then...[he and]...Sullivan will claim...Hanah as a slave by virtue of the deed poll and under the authority of Simon Vanorsdal and [the] heirs of John Kuykendall and Elizabeth his wife and likewise under the authority & by virtue of a Judgment of the General Court on a Habeas Corpus obtained By Phillis the mother of the said Hanah and George & Peggy otained at the Aprile [sic] term of the... Court 1806.[27]

Actually, in 1805, Vanorsdel only claimed Hannah as a fugitive slave, but there had been no Court decision which rendered her so. And, according to the law of the Territory, Sullivan's indenture was 'legal.' Moreover, it would have been uncharacteristic for the Judges to declare the first indenture to Sullivan void. Henry Vander Burgh was one of the Judges who, along with Harrison, passed the original indenture law in 1803. Parke introduced the indenture law of 1805 in the General Assembly and lobbied in Congress for a suspension of article six. Waller Taylor was a member of the proslavery party and had indentured a black in 1807.[28]

Beckes should not have been able to claim Hannah based on the decision that Phillis obtained in April 1806. Vander Burgh plainly stated that Peggy was not a

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[27] Ibid.

[28] See Clark County Register of Negroes and Mulattoes. Taylor indentured a black man named Gabriel.

fugitive slave, although he added a proviso which qualified the decision. But that Beckes made such an assertion indicates that the citizens of the Territory may have interpreted the Court's opinion as declaring Peggy as a slave. Beckes had neither proved Hannah a slave nor a fugitive slave. The only 'proof' that he offered the Court was a copy of the deed that Daniel Brown gave his daughter and her husband. When Vanorsdel and Claypoole offered a copy of this document to the General Court, Vander Burgh, Griffin and Davis found that Phillis, Peggy and George were not fugitives since there was insufficient evidence to prove otherwise.

Whether Hannah was a slave and how article six affected her status was not considered by the Court. On October 3, 1808, in a letter to General Washington Johnston, Parke explained further the events that had taken place in the Court on September 12, 1808. The Judge related that, in his argument for the case, Hannah's counsel posed two preliminary questions. First was whether the return was considered conclusive and second was whether the statements in the habeas corpus could be refuted by the introduction of new evidence by the party instituting the writ.[29]

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[29] Indiana Territory, "U.S. v. Beckes, Jr. Hab. Corp. for the release of Hannah, a mulatto woman, an indented servant," Benjamin Parke to General Washington Johnston dated October 3, 1808 in Miscellaneous Papers from the Auditor's Office 1799-1814 Archives Division Commission on Public Records Indiana State Library. It may not be

It is not clear whether Phillis or Hannah initiated the process for the writ of habeas corpus. But, by the laws of the Territory, neither one of them could have testified against Beckes. However, the writ of habeas corpus was one of the various writs that was issued in the name of the United States.[30] Hence, the party suing out the writ was the United States. So technically, it would have been the United States offering evidence.

Parke declared that both questions posed by Hannah's counsel, could be resolved into can the truth of the return to the writ of Hab. Corp. be refuted. The Judge then proceeded to cite various cases of the applications and results of the writ of habeas corpus before the King's Bench in England in the 1700s. Furthermore, he described an instance in 1757 when members of the House of Lords directed ten Judges to take into consideration "whether in any and what cases, it would be proper to make provision that the truth of the facts contained in the writ of Hab. Corp. might be controverted by affidavits or traverse." Parke explained further:

> when the bill was before the House of Lords, the Lords asked "whether in all cases whatsoever, the Judges are so bound by the facts set forth in the return to the writ of

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coincidental that this record was found in the papers from the auditors office. Peter Jones had been appointed auditor of the Territory by this time.

[30] Philbrick, Laws of Indiana Territory, 40, cxliii.

> Hab. Corp. that they cannot discharge the person brought up before them, although it should appear most manifestly to the Judges by the clearest and most undoubted proof, that such action is false in fact, and that the person so brought up is restrained of his liberty by the most unwarranted means, and in direct violation of the law and Justice."[31]

He also noted that five of the Judges answered no, they were not bound by the facts and five answered that they were bound to decide upon the facts presented in the habeas corpus.

Although article six had been interpreted as freeing slaves coming into the Territory after the passage of the Ordinance of 1787, although the second indenture contained in the return was incomplete and improper, and although Beckes only offered faulty arguments, Parke based his decision on the statements contained in the return.

"I shall not stop," Parke orated, "to inquire into the abuses that may be commited [sic] under the writ of Hab. Corp. if the truth of the return to it is not controverted." He also stressed that he would not consider "the injuries to the people from this decision" adding that "they are matters of Legislative, not of judicial investigation." While he could have chosen to base his decision on the answer of the five judges who concluded that they were not bound by a false return,

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[31] Indiana Territory, "U.S. v. Beckes, Jr., October 3, 1808.

Parke chose to abide by the opinion of the other judges and announced:

> I shall therefore conclude this point with the opinion Mr. Baron Adams expressed..."That in all cases whatsoever when the matter comes before the court, simply upon the return to the Hab. Corp. if that return contains a sufficient and justifiable cause of restraint, the Judges must determine upon the case as it then appears, and cannot hear any proof in contradiction to it; but are so bound by the facts set forth therein, that though they be false in fact and the party in truth restrained of his liberty by the most unwarranted means, and in direct violation of law and justice, they cannot discharge him... ."[32]

Though Parke was absent from Court when all arguments were offered, he delivered the opinion deciding that Hannah could not be released and discharged Beckes.[33]

Therefore, to borrow words from Roger B. Taney, Hannah had no rights which the Court was bound to respect. While Taney asserted the authority of the Supreme Court in matters of judicial review and of Congress' subjugation to the judiciary and to the citizens, Pake, for his own purposes, legitimized the power of the legislative body, over the judiciary, in determining the Court's position. Yet the positions in both Hannah's case and in Scott's case were ultimately the same. Taney summed it up when he asserted, "The

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[32] Ibid.

[33] Order Book, 328, 329.

justice or injustice of these laws was a matter which those who formed the sovereignty...had decided. The Court but interpreted the document... ."[34] Both Parke and Taney asserted the rights of the governed--Taney in relation to those who are governed under the Constitution and Parke in relation to the representatives of the citizenry in Indiana Territory.

Both decisions were political. In Parke's case, it was to address the anti-Harrison group in the Territory. The second session of the General Assembly convened less than two weeks after the habeas corpus suit. But this time, with a majority of anti-Harrisonians in the lower house. Parke, Harrison and other proslavery anti-divisionists supporters undoubtedly could have predicted what would happen during the legislative session. John Rice Jones, a member of the Legislative Council, the upper house of the General Assembly, was, by now, Harrison's bitterest and most capable nemesis. Jones headed the opposition in the Council.[35]

The Illinois divisionists in the House of Representatives made the slavery issue secondary to division and joined forces with those opposed to slavery from the eastern counties. On October 1, 1808, two days before Parke wrote his opinion to Johnston, Johnston

[34] Ringer, 'We the People' and Others, 1114.

[35] Goebel, Harrison, 78-83.

presented the petition of John Griffin, the former General Court Judge and other citizens asking that slavery not be permitted in the Territory. This petition also asked that a delegate to Congress be instructed to lobby for that effect in the capitol.[36]

On October 4, 1808, the day after Parke posted his letter, the House received petitions in opposition to slavery from residents of Clark, Dearborn and even Knox Counties. Subsequently, Luke Decker and Johnston were appointed to a committee to consider the subject of slavery. Decker and Johnston were residents of Knox County, slaveholders and pro-Harrisonians. Johnston was made chairman of the committee, but three Illinois divisionists, Rice Jones, the eldest son of John Rice Jones, Charles Biggs and John Messinger also served on the committee. The anti-Harrisonians, therefore, were in the majority.

Several other petitions opposing the admission of slavery in the Territory were directed to the committee. A motion was made to table these petitions. Johnston and Decker voted in the affirmative but were defeated by the negative votes of Jones, Biggs and Messinger.[37]

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[36] Indiana Territory, Journals of the General Assembly, 183.

[37] Ibid., 193, 198, 222, 225.

On October 11, 1808, a month after the decision in Hannah's case, members of the lower house voted unanimously for division. On October 19, the House approved a report of the committee selected to address the slavery issue. Johnston read the report. It concluded that petitioning Congress for slavery was inexpedient, and it attacked and recommended the repeal of the indenture act of 1807. The Legislative Council voted for division but rejected the bill for repeal of the indenture act.[38]

In 1808, the General Assembly began to take up the "matters of Legislative" investigation Parke spoke of in his decision. The indenture law was not repealed until 1810, too late for Phillis and her children. It can only be assumed that Hannah served out her indenture contract or was sold into slavery.

[38] Ibid., 232-234, 257, 301.

I find my own
small person
a standing self
against the world
an equality of wills
I finally understand

Alice Walker

## Chapter Four:

## Afterward

The case of Phillis and her children neither caused those in power in the Territory to reevaluate their perception of the meaning of article six of the Northwest Ordinance, nor to reexamine their position of fugitives in the Territory. Furthermore they chose not to amend the indenture law they had enacted. The historian Jacob Dunn excused this action maintaining that "The Governor and Judges could not rectify the law because they had power only to adopt the laws of the states."[1]

However, as evidenced by the cases in which they amended other laws of Indiana Territory, had the territorial officials so desired, they could have amended the indenture laws as well.[2] Harrison, as governor, had

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[1] Jacob Dunn, Indiana and Indianans, I, 242.

[2] For examples of amendments to the laws of the Territory see: "An Act to amend an act entitled an act for establishing Courts for the trial of small causes," (1803); "An Act repealing a part of an act entitled "An Act for the admission of Attornies and Counsellors at Law," (1805); "An Act altering the time of holding the Courts of Common Pleas, of the counties therein mentioned," (1806); "A Resolution for revising the laws of this Territory, and for other purposes," (1807) in Philbrick, Laws of Indiana Territory, 91, 141, 200, 217.

the power of executive decree and of veto, while the Judges of the General Court held the power to issue judicial decrees. Moreover they could have chosen to enforce strictly the sixth article of the Northwest Ordinance.

Even though Peggy, George and Hannah inherited the status of their mother at birth in Virginia, when the mother and her children came to Indiana, they were free by virtue of article six of the Ordinance of 1787. Arthur St. Clair, Governor of the Northwest Territory in 1798, had asserted that slaves brought into the Territory after July 13, 1787, when the Ordinance was passed, were free.

Harrison must have understood that also. All of the indenture laws were entitled, "An Act concerning the introduction of Negroes and Mulattoes into [Indiana] Territory." The wording of the indenture laws only addressed the means by which persons could indenture blacks who came into the Territory under contract to serve, not those who were already there. None of the indenture laws were retroactive. Yet, as demonstrated by the cases of Phillis and her children, Harrison, the judges and the General Assembly reduced even freed blacks, who had come to the Territory after the adoption of the Ordinance and before the introduction of the indenture acts, to slavery. So, in their effort to

establish a slavocracy and to police and regulate slavery in the Territory, Harrison and his administrators violated the very laws they created.

Harrison, the judges and the General Assembly asserted their rights, under the Constitution, to determine their own mode of government. As Taney later reminded America, Congress had no discretionary power "over the person or property of a citizens... . The powers of the Government and the rights and privileges of the citizens are regulated plainly by the Constitution...."[3]

The citizens of the Indiana Territory continued to exercise their constitutional rights to private property. Even though Congress repeatedly denied their petitions for slavery in the Territory, those in power continued buying, trading and selling black people. Those involved in Phillis' case were no exception. In 1813, five years after Hannah's case, Benjamin Beckes became sheriff of Knox County, a position he resigned in 1818. Even after Indiana became a state in 1816, Beckes continued selling blacks, in violation of the State Constitution. In 1818, he sold Alice Carr, a woman of color, to John Myer, a

[3] Ringer, 'We the People' and Others, 1113.

fellow resident of Vincennes, who subsequently sold her to John Vawter, a resident of Jennings County.[4]

In 1813, Daniel Sullivan announced his plans to sell his "plantation" on the Wabash River above Vincennes, and to leave the county. Nothing else is known of him. Jeremiah Claypoole and Johnathan Purcell and his family continued to live in Knox County where the Purcells continued to hold "slaves."[5]

Although Simon Vanorsdel moved to Harrison County in 1812, he continued to function extralegally and illegally. In 1817, he was a party in a legal battle which peripherally involved the status of blacks in Knox County. Luke Decker, a first cousin to John Kuykendall, Jr. and a slaveholder in Vincennes, initiated a debt case against John Purcell, Jr., the grandson of Johnathan Purcell. The case was not settled until after Decker died, but his estate received the damages the Court awarded him. Personal gain may have motivated Decker more than any strong desire to see justice done. Nevertheless, he contended that John Purcell, Jr.

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[4] "Indenture of Alice Carr, a woman of color" June 19, 1818 in Jennings County Collection, Indiana Division Indiana State Library.

[5] "Luke Decker v. John Purcell Transcript John Decker & John Claypoole Executors of Luke Decker Decd Complete Record Chancery John Purcell," in Papers of Albert G. Porter Papers Collected by Albert G. Porter Folder 18 Indiana Historical Society.

illegally sold four blacks, Sally, and her three daughters Hannah, Olla and Betsy to Vanorsdel.

In this case, the primary issue was over a debt and not slavery. Ironically Decker was himself involved in suit brought against him by two blacks, Bob and Anthony, the children of a black woman Rachel, who Jeremiah Claypoole had sold before Decker left Virginia in 1784. They sued Decker for their freedom. Decker claimed Bob by virtue of an indenture contract and Anthony as a slave for life. Decker's attorney, Charles Dewey wrote, "We deny that the [Indiana] Constitution forbidding involutary servitude has anything to do with this case because service cannot be said to be involuntary which the party has freely contracted to render." Of Anthony, Dewey asserted, "He is a slave for life... . The Act of the session of Virginia to the United States of the Northwestern Territory saved all the rights of the inhabitants at the time of the Session to hold slaves...and to hold the issue of slaves."[6]

Dewey's assertion coincided perfectly with the opinion laid down by Taney, in relation to the Missouri Compromise, when the judge later interjected:

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[6] Charles Dewey to [?], March 13, 1818 in Albert G. Porter Papers Papers Collected by Albert G. Porter Folder 18 Indiana Historical Society. For a discussion of the case against Decker see Harry and others v. Decker & Hopkins 1 Walker (Miss) 38 (1818). Even a Mississippi Court declared Harry and the other blacks free by virtue of the Ordinance of 1787.

> It is the decision of the Court that the Act of Congress which prohibited a citizen from holding and owning property of this kind in the territory of the United States north of the line...mentioned is unwarranted by the Constitution.[7]

Yet Decker maintained that Vanorsdel hired David Coons, a resident of Kaskaskia, to transport the four black females out of Knox County. Moreover, Decker contended that this was in violation of the eleventh article of the State Constitution which forbade slavery and involuntary servitude. He, therefore, maintain that the women were not slaves and should not have been sold.

The women had, no doubt, been kidnapped. Kidnappings during this period were certainly not unheard of. For example, in 1814, residents of Jefferson County, Indiana complained to Thomas Posey, then Governor of Indiana Territory, that a black woman named Lucy and her infant child had been kidnapped and taken to Kentucky. They further asserted that a man named Henderson, who allegedly kidnapped the mother and child, had "acknowledged that the woman [and] child [were] free." The residents also contended that she was "lawfully married to a free Negro man named Ben Dickson."[8]

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[7] Fehrenbacher, The Dred Scott Case, 381.

[8] "Memorial of the Undersigned Inhabitants of Jefferson County to Thomas Posey....," October 4, 1814, in William English Collection Miscellaneous Indiana Historical Society.

Apparently the kidnapping of blacks was of much concern to the first General Assembly of the state of Indiana. On December 20, 1816, the legislators approved "An Act to prevent manstealing." This act forbade anyone from taking blacks out of the state without first establishing a claim to them and outlined the procedures that persons claiming blacks must follow. This law was evidently ignored for in 1819, the legislature passed "An Act to enforce the act to prevent manstealing."[9]

The case against John Purcell, Jr. continued in the Knox County Circuit Court until after Decker's death in 1825. Although the Court found for Decker's administrators, nothing addressed the question of Sally and her children or the slavery issue. It was not until the case of Polly v. Laselle in 1820, that slavery was ended by Court decree in Indiana. The next year, in the case of Mary Clark v. General Washington Johnston the Supreme Court decided that no adults were bound to fulfill the terms of an indenture contract against their will.[10] But while the Supreme Court decisions in 1820 and 1821 ended slavery and indentured servitude de jure it

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[9] See: Laws of the State of Indiana Passed and Published at the Second Session of the General Assembly (Corydon, 1818), 367; and Laws of the State of Indiana Passed and Published at the Third Session of the General Assembly (Corydon, 1919), 64, 65.

[10] For an account of these cases see: Polly v. Laselle in 1 Blackford (Ind) 62 (1820); and Mary Clark v. General Washington Johnston 1 Blackford (Ind) 125 (1821).

did not end either de facto. There were slaves listed on the 1840 Census for Indiana.

It was certainly not a new phenomenon for the law to be ignored. The indenture law of 1807 was repealed in 1810, too late for Phillis and her children because it had no effect on blacks already serving indenture contracts in the Territory. And even though the law was repealed in 1810, blacks continued to be indentured in the Territory. In 1810, there were 237 "slaves" listed in Clark, Knox and Harrison counties. The Territorial Court Judges continued holding their blacks. When Henry Vander Burgh died at age fifty-two in 1812, his estate included slaves. This estate was still being contested in 1817.[11]

Vander Burgh was no different from the other proslavery and pro-Harrisonian proponents in the Territory. Waller Taylor, who sat on the bench of the General Court during the last trial of Peggy and the trial of Hannah, was the first United States Senator from Indiana serving two terms from December 12, 1816 to March 3, 1825. He died at about age forty-one in Virginia on August 26, 1826. It is very likely that Taylor took

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[11] See Western Sun (February 12, 1817). See also: "Probate Records of Henry Vander Burgh," in Probate Court Records Byron Lewis Library Vincennes University; Knox County Will Book Record, 65 in Knox County Court House; and Earl E. Mc Donald, "Disposal of Negro Slaves by Will in Knox County, Indiana," Indiana Magazine of History 26 (June, 1930),145.

Gabriel, the black man he indentured in Clark County in 1807, to Washington and then to Virginia with him since he had indentured the black man until 1850. If this were the case, then Gabriel likely would have returned to the status of slave for life in Virginia.

Benjamin Parke hedged addressing the issue of slavery or freedom in Hannah's case, and he continued supporting the proslavery faction in the Territory. Of him a contemporary wrote in 1809:

> Parke whose republicanism had been neutralized in the Governor's atmosphere, did not disdain at the nod of his master [Harrison] to descend from his elevated station to enlist in the ranks, nay to place himself at the head of a faction. A series of essays confessedly written by [Parke] and signed Slim Simon containing a compound of Sophistry, bilingsgate and the most damnable hypocrisy were vomited...in defence [sic] of Slavery the object of their unceasing sollicitude [sic].[12]

Moreover, even though the indenture law of 1807 was repealed, Parke continued, inappropriately and illegally, to witness indentures. Pickard and his wife Jane, both persons of color, were brought from Shelby County Kentucky by Peter Hansbrough and indentured for thirty years each in 1810. Five years later, Pickard was sold to Toussaint Du Bois, a Knox County resident, and indentured for twenty years. The indenture read in part:

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[12] Badollet to Gallatin, November 13, 1809 in John Badollet, The Correspondence of John Badollet..., 122. This quote is type exactly as it was written.

> Be it remembered that on the day of the date hereof, Personally came before me, Benjamin Parke, the undersigned one of the Judges in...the territory, the above Pickard, a man of Color & acknowledged that he had voluntarily entered into signed and sealed the foregoing Indenture for the consideration [$20.00] and for the purpose therein mentioned.
>
> Given under my hand & seal this Sixth day of November, Eighteen Hundred and fifteen.
>
> B. Parke
>
> [Seal]
>
> Recorded in my office, Vincennes, Knox County, November 5, A. D.. 1815
>
> J. D. Hay, Reco. K.C.[13]

In 1813, Thomas Posey, a Virginian and a former slaveholder who gave his slaves to his children, replaced Harrison as Governor of Indiana Territory.[14] Harrison had become a General leading forces against the Shawnee in the Battles of Thames and Tippecanoe. He took his servant George along.[15] While at camp, shortly before the Battle of Tippecanoe, Harrison had instructed George

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[13] "Two Indentures of Negroes Original Documents" Indiana Magazine of History 7 (Sept., 1911), 133-135. The indenture was located in Book A, 269, Knox County Court House. It is not known whether the mistake in the date was in the original or a typographical error. The quote is typed exactly as written.

[14] See Thomas Posey to General John Gibson, March 13, 1813 in William English Collection Miscellaneous Indiana Historical Society. Posey had previously signed a petition which proposed that Revolutionary War veterans from Virginia be allowed to bring their slaves into the Northwest Territory.

[15] The Messages and Papers of William Henry Harrison, ed. Logan Esarey, 690.

to put the bay colored horse, which the General usually rode, in front of his tent. Early the next morning the Shawnee attacked the site. In the confusion resulting from the attack, George forgot that he had put the bay behind the tent. Harrison, as a result had to ride a dark colored horse. The Shawnee mistaked another officer who rode a bay horse for Harrison. The man was shot and died instantly.

Harrison believed that Providence, through George, had intervened and he credited George with saving his life because the black man awoke confused and had forgotten where he had put the bay horse. After the defeat of the Shawnee, Harrison returned to Ohio. Almost immediately after his arrival, he took advantage of the black laws that had been enacted in Ohio. Though the Ohio constitution forbade slavery and involuntary servitude, on September 22, 1814, Harrison indentured a woman of color named Betty and her infant son John.[16]

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[16] "Indenture of Betty and John," September 22, 1814. Harrison Collection Miscellaneous Indiana Historical Society. For the debate over the adoption of article six of the Ordinance of 1787 into the Ohio Constitution see: Journal of the Convention of the Territory Northwest of the Ohio, Begun and Held at Chillicothe, on Monday the First day of November A.D. One Thousand Eight Hundred and Two and of the Independence of the United States the Twenty Seventh (Chillicothe, 1802) This edition is in the Marion County Public Library in Indianapolis. For a discussion of the black laws in Ohio see: Leon Litwack, North of Slavery: The Negro in the Free States 1790-1860 (Chicago, 1961), 73-74; Carter G. Woodson, "The Negroes of Cincinnati Prior to the Civil War," Journal of Negro History 1 (January, 1916),7; and Richard C. Wade, "The Negro in Cincinnati, 1800-1830," Ibid., 39 (January,

After he returned to Vincennes, George was associated with a merchant named William Burtch. Burtch reportedly arrived in Vincennes in 1815. So it is not clear precisely when this association began. But George was later referred to as Burtch's "black man," and subsequently took the surname Burtch. Another mulatto man, whom Harrison had indentured, Jack Burton, was also associated with William and George Burtch.[17] But it is unclear whether Harrison transfered the indentures of George Burtch and Jack Burton or freed them.

George Burtch lived in Vincennes until his death in 1840. Reputedly when Harrison returned to Vincennes on a presidential campaign tour before the 1840 election, he purchased a home for George as a reward for saving his life at Tippecanoe.[18] George must have married and began

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1954), 50-55. Wade concentrates most of the plight of blacks in Cincinnati in the 1820's, especially after the riot of 1829.

[17] See John R. Dunning, "Sketches of the Life and Character of Old Billy B., of Vincennes, Indiana," [n.p.,c. 1820?] in Pamphlet File Byron Lewis Library Vincennes University. This work satirizes William Burtch, George Burtch and Jack Burton.

[18] Anna O'Flynn, A Vest Pocket History of Vincennes (Vincennes, n.d.), 54. See also "A List of Lots in the Borough of Vincennes," in Tax Assessment Lists, 1837 Byron Lewis Library Vincennes University. George Burtch owned Lot # 203 valued at $400 in 1837 and he had a personal value of $100. This home was previously owned by Joseph Uno. Uno owned Lot # 203 valued at $50 in 1825. See: "A List of Lots in the Borough of Vincennes, 1825," in Tax Assessment List, 1825;; Tax Assessment List, 1828 Byron Lewis Library. George Burtch lived on Section 12 Town 3 Range 10 2.842 Acres.

having children in 1813. The name of his wife has not been found. He had six children: Abraham Burtch, born in 1813; Crittenden, born in 1819; Sarah, born in 1822; William, born in 1824; Thomas, born in 1826; and Juliet, born in 1828.[19] George died of dyspepsia at age fifty-four on June 18, 1840 and was interred in the Public Burial Grounds in Vincennes. William H. Allison, of Vincennes, administered his estate which the Knox County Probate Court declared "probably insolvent."[20]

Nothing else is known of Hannah or Peggy. It is assumed that Hannah served the terms of her indenture contract. Whether she was freed at the end of the twelve years is unknown. One historian noted that it was not unusual for blacks not to receive their certificates of freedom at the end of their time of indenture. The historian, J. L. McDonough, wrote of the custom in Indiana at that time, "To permit continued introduction into the territory of slaves under the guise of indentured servants was a subterfuge so bold and transparent that--once it was seen to go unchallenged--we

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[19] See "Summons" June 14, 1844 in "Probate Record of George Burtch," in Probate Court Records, Byron Lewis Library Vincennes University. The summons commanded the sheriff to summon "Abraham Burtch, aged 31,...Crittenden Burtch, aged 25,...Sarah Oakes, aged 22,... William Burtch, aged 20,...Juliet Burtch, aged 16,...and Thomas Burtch, aged 18 [the children of George, deceased].

[20] Clipping of "Administrator's Notice," June 1, 1844 in Ibid.

may confidently assume that slaves whose "'contract'" bondage had expired were not always released and funished with their certificates of freedom."[21]

Nothing else is known of Phillis. But one source, albeit somewhat sketchily, maintained that "George [Burtch's] mother, sister and two brothers were stolen." "They were hustled off toward St. Louis in mid-winter," Jane Burton, the daughter of Jack, asserted later, "and it was designed to ship them at once to the South down the Mississippi River."[22] But, as she explained further, "by the assistance of Sheriff [John] Decker, they "got the stolen people back." She also reported that George Burtch and Jack Butler were among the possee that pursued

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[21] [J. L. McDonough], History of Randolph, Monroe and Perry Counties Illinois, (reprint Valmeyer, Illinois, 1974),109. A copy of this edition is located in the Genealogy Division of the Indiana State Library.

[22] (Vincennes) The Commerical (March 6, 1891). This statement was made by Jane Burton, the daughter of Jack Burton, a free black whom she claimed indentured himself to Harrison. Burton reportedly came to Vincennes in 1801. Miss Burton placed Harrison in Vincennes in 1823, which is erroneous. It is not known whether the date should have been 1813. She maintained further that "only four years before [she and her family were kidnapped] George Burtch was in trouble and my father rendered all the assistance he could." Four years before 1813 would have been 1809. This would have been near the time of Peggy and Hannah's trials. She accused George of collaborating with the kidnappers of her family. As it happened, a priest from Vincennes was in New Orleans where the Burton family had been taken and recognized them and initiated proceeding to get them back to Vincennes. Miss Burton was about five when she was supposed to have been kidnapped. She told this story in 1891, when she was at least well past seventy.

the kidnappers.[23] Who the sister and two brothers were was not explained. But two of them may have been Bob and Kate, Phillis' eldest children.

Perhaps all of the facts in the case of Phillis and her children will never be known. But what is clear is that the Governor and his constituency used extralegal means to regulate slavery in the Territory and supported it by enacting three indenture laws and through the judicial process. They regulated policy and adhered to customs that insured slavery in the Territory. And despite a federal prohibition that freed Phillis and her children, Harrison and his cohorts subjected them to the degrading position of indentured servitude and virtual slavery.

McDonough wrote that "slavery in the guise of indentured servitude" went unchallanged in the Territory. However, Phillis, though fighting a losing battle, challenged the system and made the Territorial officials take notice. Phillis, throughout the ordeal, stood firm, maintaining her right and the right of her children to be free. Divested of rights and limited in power, this black woman remained adamant--in her pursuit of freedom for herself and her children. However, despite her

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[23] Ibid. Miss Butler claimed that at the time Phillis and the three were kidnapped, "John Decker was high sheriff and Seneca Amy was deputy sheriff of Knox County." No record has been found that indicates when this was.

efforts and those of her opponents to use the Courts to resolve the issue, the problem was destined to prevade politics for the next fifty years.

Although they were not handled in the same manner as those of Phillis and her children, other cases of fugitive slaves were tried in Indiana.[24] Only the Civil War would resolve the ambiguities sown by the section six of the Ordinance and sections two, three and four of the Constitution, although it would not be until the passage of the fourteenth amendment that all those born in the United States or its Territories would become citizens.

[24] For two examples of these cases see: Messages and Papers of Governore James Brown Ray Governor of Indiana 1825-1831, Dorothy Riker and Gayle Thornbrough, eds., (Indianapolis, 1954), 526-520; Indiana Journal (December 30, 1829); Ibid. (January 27, 1830); and Ibid. (February 3, 1830). William Sewall, who was from Virginia was emigrating west. Due to a food he was detained in Marion County, Indiana. Nelly, a slave claimed that she and four others were free, by Indiana's constitution. Bethuel F. Morrison, president judge of the fifth judicial circuit, decided that since Sewall had left Virginia, he forfeited his citizenship there and, could not hold slaves in a free state. Therefore, Sewall must foreit his property. See also State v. Donnell 3 Blackford (Ind) 480 (1852).

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Name: Gwendolyn J. Crenshaw

Current Mailing Address: 3452 Madeira Court
Indianapolis, Indiana 46203

Education:

| Institution | Major | Degree |
|---|---|---|
| Indiana University-Purdue Univeristy at Indianapolis | History | B.A. |
| Indiana University | History | M.A. |

Positions Held:

| | |
|---|---|
| 1985-1986 | Project Coordinator for the "Bury Me In A Free Land: The Abolitionist Movement in Indiana 1816-1865" Project. |
| 1985 Officer | Consultant to the Program Development at Conner Prarier Pioneer Village. |
| 1984 | Consultant to the Community Development Officer at The Lilly Endowment, Inc. |
| 1982-1984 Project. | Researcher for the Freetown Village |

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